

GC DALTON INDUSTRIES, INC., PETITIONER, VS. EQUITABLE PCI BANK, RESPONDENT.*G.R. No. 171169. August 24, 2009*

Ponente: CORONA, J.

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In 1999, respondent Equitable PCI Bank extended a P30-million credit line to Camden Industries, Inc. (CII) allowing the latter to avail of several loans (covered by promissory notes) and to purchase trust receipts. To facilitate collection, CII executed a "hold-out" agreement in favor of respondent authorizing it to deduct from its savings account any amounts due. To guarantee payment, petitioner GC Dalton Industries, Inc. executed a third-party mortgage of its real properties in Quezon City[1] and Malolos, Bulacan[2] as security for CII's loans.[3]

CII did not pay its obligations despite respondent's demands. By 2003, its outstanding consolidated promissory notes and unpaid trust receipts had reached a staggering P68,149,132.40.[4]

Consequently, respondent filed a petition for extrajudicial foreclosure of petitioner's Bulacan properties in the Regional Trial Court (RTC) of Bulacan on May 7, 2004.[5] On August 3, 2004, the mortgaged properties were sold at a public auction where respondent was declared the highest bidder. Consequently, a certificate of sale[6] was issued in respondent's favor on August 3, 2004.

On September 13, 2004, respondent filed the certificate of sale and an affidavit of consolidation of ownership[7] in the Register of Deeds of Bulacan pursuant to Section 47 of the General Banking Law.[8] Hence, petitioner's TCTs covering the Bulacan properties were cancelled and new ones were issued in the name of respondent.[9]

In view of the foregoing, respondent filed an ex parte motion for the issuance of a writ of possession[10] in the RTC Bulacan, Branch 10 on January 10, 2005.[11]

Previously, however, on August 4, 2004, CII had filed an action for specific performance and damages[12] in the RTC of Pasig, Branch 71 (Pasig RTC), asserting that it had allegedly paid its obligation in full to respondent.[13] CII sought to compel respondent to render an accounting in order to prove that the bank fraudulently foreclosed on petitioner's mortgaged properties.

Because respondent allegedly failed to appear during the trial, the Pasig RTC rendered a decision on March 30, 2005[14] based on the evidence presented by CII. It found that, while CII's past due obligation amounted only to P14,426,485.66 as of November 30, 2002, respondent had deducted a total of P108,563,388.06 from CII's savings account. Thus, the Pasig RTC ordered respondent: (1) to return to CII the "overpayment" with legal interest of 12% per annum amounting to P94,136,902.40; (2) to compensate it for lost profits amounting to P2,000,000 per month starting August 2004 with legal interest of 12% per annum until full payment and (3) to return the TCTs covering the mortgaged properties to petitioner. It likewise awarded CII P2,000,000 and P300,000, respectively, as moral and exemplary damages and P500,000 as attorney's fees.

Respondent filed a notice of appeal. CII, on the other hand, moved for the immediate entry and execution of the abovementioned decision.

In an order dated December 7, 2005,[15] the Pasig RTC dismissed respondent's notice of appeal due to its failure to pay the appellate docket fees. It likewise found respondent guilty of forum-shopping for filing the petition for the issuance of a writ of possession in the Bulacan RTC. Thus, the Pasig RTC ordered the immediate entry of its March 30, 2005 decision.[16]

Meanwhile, in view of the pending case in the Pasig RTC, petitioner opposed respondent's ex parte motion for the issuance of a writ of possession in the Bulacan RTC. It claimed that respondent was guilty of fraud and forum-shopping, and that it was not informed of the foreclosure. Furthermore, respondent fraudulently foreclosed on the properties since the Pasig RTC had not yet determined whether CII indeed failed to pay its obligations.

In an order dated December 10, 2005, the Bulacan RTC granted the motion and a writ of possession was issued in respondent's favor on December 19, 2005.

Petitioner immediately assailed the December 10, 2005 order of the Bulacan RTC via a petition for certiorari in the Court of Appeals (CA). It claimed that the order violated Section 14, Article VIII of the Constitution[17] which requires that every decision must clearly and distinctly state its factual and legal bases. In a resolution dated January 13, 2006,[18] the CA dismissed the petition for lack of merit on the ground that an order involving the issuance of a writ of possession is not a judgment on the merits, hence, not covered by the requirement of Section 14, Article VIII of the Constitution.

Petitioner elevated the matter to this Court, assailing the January 13, 2006 resolution of the CA. It insists that the December 10, 2005 order of the Bulacan RTC was void as it was bereft of factual and legal bases.

Petitioner likewise cites the conflict between the December 10, 2005 order of the Bulacan RTC and the December 7, 2005 order of the Pasig RTC. Petitioner claims that, since the Pasig RTC already ordered the entry of its March 30, 2005 decision (in turn ordering respondent to return TCT No. 351231 and all such other owner's documents of title as may have been placed in its possession by virtue of the subject trust receipt and loan transactions), the same was already final and executory. Thus, inasmuch as CII had supposedly paid respondent in full, it was erroneous for the Bulacan RTC to order the issuance of a writ of possession to respondent.

Respondent, on the other hand, asserts that petitioner is raising a question of fact as it essentially assails the propriety of the issuance of the writ of possession. It likewise points out that petitioner did not truthfully disclose the status of the March 30, 2005 decision of the Pasig RTC because, in an order dated April 4, 2006, the Pasig RTC partially reconsidered its December 7, 2005 order and gave due course to respondent's notice of appeal. (The propriety of the said April 4, 2006 order is still pending review in the CA.)

We deny the petition.

The issuance of a writ of possession to a purchaser in an extrajudicial foreclosure is summary and ministerial in nature as such proceeding is merely an incident in the transfer of title.[19] The trial court does not exercise discretion in the issuance thereof.[20] For this reason, an order for the issuance of a writ of possession is not the judgment on the merits contemplated by Section 14, Article VIII of the Constitution. Hence, the CA correctly upheld the December 10, 2005 order of the Bulacan RTC.

Furthermore, the mortgagor loses all legal interest over the foreclosed property after the expiration of the redemption period.[21] Under Section 47 of the General Banking Law,[22] if the mortgagor is a juridical person, it can exercise the right to redeem the foreclosed property until, but not after, the registration of the certificate of

foreclosure sale within three months after foreclosure, whichever is earlier. Thereafter, such mortgagor loses its right of redemption.

Respondent filed the certificate of sale and affidavit of consolidation with the Register of Deeds of Bulacan on September 13, 2004. This terminated the redemption period granted by Section 47 of the General Banking Law. Because consolidation of title becomes a right upon the expiration of the redemption period,[23] respondent became the owner of the foreclosed properties.[24] Therefore, when petitioner opposed the ex parte motion for the issuance of the writ of possession on January 10, 2005 in the Bulacan RTC, it no longer had any legal interest in the Bulacan properties.

Nevertheless, even if the ownership of the Bulacan properties had already been consolidated in the name of respondent, petitioner still had, and could have availed of, the remedy provided in Section 8 of Act 3135.[25] It could have filed a petition to annul the August 3, 2004 auction sale and to cancel the December 19, 2005 writ of possession,[26] within 30 days after respondent was given possession.[27] But it did not. Thus, inasmuch as the 30-day period to avail of the said remedy had already lapsed, petitioner could no longer assail the validity of the August 3, 2004 sale.

Any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for the refusal to issue a writ of possession. Regardless of whether or not there is a pending suit for the annulment of the mortgage or the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case.[28]

Needless to say, petitioner committed a misstep by completely relying and pinning all its hopes for relief on its complaint for specific performance and damages in the Pasig RTC,[29] instead of resorting to the remedy of annulment (of the auction sale and writ of possession) under Section 8 of Act 3135 in the Bulacan RTC.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Quisumbing,[*] Leonardo-De Castro and Bersamin, JJ., concur.

[*] Additional member per raffle dated August 17, 2009.

[1] Covered by TCT No. 351231. Rollo, p. 53.

[2] Covered by TCT Nos. T-37150, T-37151 and T-37152. Id., pp. 80-82.

[3] Dated August 16, 1999. Id., pp. 76-79.

[4] Petition for Sale, Annex "1." Id., pp. 196-198.

[5] Docketed as Civil Case No. 47-M-2005.

[6] Id., p. 83.

[7] Id., p. 84.

[8] General Banking Law, Sec. 47 provides:

Section 47. Foreclosure of Real Estate Mortgage. -- In the event of foreclosure, whether judicially or

extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure, shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration. (emphasis supplied)

[9] Rollo, pp. 85-86. The titles were issued sometime in December 2004.

[10] Docketed as LRC Case No. P-47-2005.

[11] Rollo, pp. 70-73.

[12] Docketed as Civil Case No. 70098.

[13] Rollo, pp. 87-90.

[14] Penned by Judge Celso D. Laviña. Id., pp. 52-60.

[15] Penned by Acting Judge David L. Mirasol. Id., pp. 131-138.

[16] Id.

[17] Constitution, Art. VIII, Sec. 14 provides:

Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

[18] Penned by Associate Justice Marina A. Buzon (retired) and concurred in by Associate Justices Aurora Santiago-Lagman (retired) and Arcangelita Romilla-Lontok of the Special Sixteenth Division of the Court of Appeals. Rollo, pp. 23-28.

[19] *Spouses Yulienco v. Court of Appeals*, 441 Phil. 397, 407 (2002).

[20] *Mallari v. Banco Filipino Savings & Mortgage Bank*, G.R. No. 157660, 29 August 2008.

[21] *Spouses Yulienco v. Court of Appeals*, supra note 19 at 406.

[22] Supra note 8.

[23] *Tarnate v. Court of Appeals*, G.R. No. 100635, 13 February 1995, 241 SCRA 254, 260.

[24] *Philippine Commercial International Bank v. Court of Appeals*, 398 Phil. 534, 540 (2000).

[25] Section 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 supplied)

[26] *Suico Industrial Corporation v. Court of Appeals*, 361 Phil. 160, 170 (1999) and *Sulit v. Court of Appeals*, 335 Phil. 914, 924 (1997).

[27] *Supra* note 25.

[28] *Fernandez v. Espinosa*, G.R. No. 156421, 14 April 2008.

[29] *Suico Industrial Corporation v. Court of Appeals*, *supra* note 26.

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