JETRI CONSTRUCTION CORPORATION/ ANASTACIA CORPUZ RIGOR, PRESIDENT, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

G.R. No. 171687. June 08, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure, assailing the Resolution[1] of the Court of Appeals in CA-G.R. CV No. 84788, dated 17 November 2005, which dismissed petitioner's appeal for its failure to file its appellant's brief within the reglementary period despite notice.

Sometime in 1994, petitioner Jetri Construction Corporation applied for a P20,000,000.00 Omnibus Line Credit Facility with Far East Bank and Trust Company, predecessor-in-interest of herein respondent Bank of the Philippine Islands (BPI). Upon approval of said credit facility, petitioner Jetri Construction Corporation was able to borrow from the bank a total of P20,000,000.00. As security for the loans, petitioner mortgaged its land covered by Transfer Certificate of Title (TCT) No. 213950 of the Registry of Deeds of Manila as well as the 4-storey building erected thereon located at No. 177 M. dela Fuente St., Sampaloc, Manila. A Comprehensive Surety Agreement was also executed by Anastacia Corpus Rigor, president of Jetri Construction Corporation, wherein she acted as surety of the corporation's loans from Far East Bank and bound herself to pay jointly and severally with Jetri Construction Corporation all obligations the latter may incur.

When Jetri Construction Corporation defaulted in paying the loan, it entered into a Loan Restructuring Agreement with the bank wherein it acknowledged that its obligation under the Discounting Line was for the total amount of P22,621,876.37.

For failure of Jetri Construction Corporation to pay the loan under the Loan Restructuring Agreement upon maturity, the bank foreclosed the real estate mortgage on the property covered by TCT No. 213950. On 22 November 1999, an auction sale was held wherein the mortgaged property was sold to the bank, it being the lone and highest bidder. The Certificate of Sale was registered and annotated at the back of TCT No. 213950 on 3 December 1999.

Upon expiration of the redemption period, with petitioner failing to redeem the property, ownership over the mortgaged property was consolidated in favor of the bank and a new certificate of title was issued in its name, particularly TCT No. 250654.

On 28 August 2001, BPI filed before the Regional Trial Court (RTC) of Makati, Branch 62, Civil Case No. 01-1336 against herein petitioner for alleged foreclosure deficiency in the amount of P33,270,131.25.

Jetri Construction Corporation, on the other hand, simultaneously filed two complaints against respondent BPI and its managing officers, respectively. The first is a complaint for (a) annulment of mortgage foreclosure; (b) cancellation of respondent's derivative Transfer Certificate of Title No. 250654; (c) quieting of petitioner's

ownership and restoration of title; and (d) indemnity for damages before the RTC of Manila, Branch 50 and docketed as Civil Case No. 04-111298. The second is a complaint for Estafa before the City Prosecutor's Office of Manila against the managing officers of BPI for the alleged misappropriation of the Three (3) Million Pesos paid by petitioner as amortization for its loan.

Despite demands, petitioner refused to vacate the premises of the foreclosed property, thus, on 15 August 2003, herein respondent filed a Petition for the Issuance of Writ of Possession of Real Property[2] before the RTC of Manila.

On 28 February 2005, the RTC of Manila, Branch IV, issued the assailed Order[3] issuing the writ of possession prayed for by respondent BPI. According to the court a quo:

> As to the Oppositor's attack on the validity of the foreclosure sale, the Highest Tribunal has already ruled in several cases that:
> "The order for writ of possession issue as a matter of course with no discretion being left to the court and any question regarding the validity of the sale should be determined in a subsequent proceeding and cannot be raised as a justification for opposing the issuance of writ of possession." [De Gracia vs. San Jose, et al., 94 Phil. 623].
>
> "x x x the order for a writ of possession issues as a matter of course upon the filing of the proper motion and approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the subsequent cancellation of the writ) is to be determined in a subsequent proceeding as outlined in Sec. 8. Such question is not to be raised as a justification for opposing the issuance of a writ of possession, since, under the Act, the proceeding for this is ex parte." [Banco Filipino Savings and Mortgage Bank vs. Intermediate Appellate Court, 142 SCRA, citing Marcelo Steel Corp. vs. Court of Appeals, 54 SCRA 89].

Moreover, in the case of Ong vs. CA, 333 SCRA 189, the High Court fortified the foregoing obiter dicta by declaring that:

> "As a rule, any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession. Regardless of whether or not there is a pending suit for 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 said case."

As to the prayer of the petitioner bank for the issuance of writ of possession over the subject property, the court finds no cogent reason why the same should not be issued, in the case of PDCP Bank vs. Vestil 264 SCRA 467, the Supreme Court declared among others, that:

> "In cases in which, an extra-judicial sale is made pursuant to an extra-judicial foreclosure of mortgage, redemption is governed by secs. 29 to 31 and sec. 35, Rule 39 of the Rules of Court and sec. 35 provides among others, that, If no redemption is made within twelve (12) months after the sale, the purchaser or his assignee is entitled to a conveyance and possession of the property. "The rule therefore is that: after the redemption period has expired, the purchaser of the property has the right to be placed in possession thereof.

In Navarra vs. CA, 204 SCRA 850, The Highest Tribunal ruled:

> The purchaser at an extra-judicial foreclosure sale has the right to the possession of the property even during the one-year period of redemption provided he files an indemnity bond. After the lapse of the said period with no redemption having been made, that right becomes absolute and may be demanded by the buyer even without the posting of the bond. Possession may then be obtained under a writ which, may be applied for ex parte pursuant to sec. 7 of Act 3135 as amended by Act 4118."

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It having been established that the period of redemption of the property described in Transfer Certificate of Title No. 213950 (now Transfer Certificate of Title No. 250654) which was sold at public auction to Far East Bank and Trust Company, (the herein petitioner's predecessor-in-interest) as highest bidder in connection with the extra-judicial foreclosure sale of the mortgage has already expired without said property having been redeemed and a new title, Transfer Certificate of Title No. 250654 issued in the name of Far East Bank and Trust Company (now) Bank of the Philippine Islands and in conformity with the provisions of Act 3135, as amended, the petition is hereby GRANTED.

WHEREFORE, let the corresponding writ of possession be issued directing the Sheriff of this Branch to place the herein petitioner bank in actual physical possession of the foreclosed property situated in the district of Sampaloc, City of Manila, and covered by Transfer Certificate of Title No. 213950, now Transfer Certificate of Title No. 250654, and to eject therefrom mortgagor JETRI Construction Corporation, its agents and such other persons claiming rights under it.[4]

Aggrieved by the aforequoted Order, petitioner instituted an appeal before the Court of Appeals which was dismissed by the appellate court in a Resolution dated 17 November 2005, which reads:

> For failure of the appellant to file its appellant's brief within the reglementary period despite notice, the appeal is declared ABANDONED and hereby DISMISSED, pursuant to Section 1 (e), Rule 50 of the 1997 Rules of Civil Procedure.[5]

Petitioner subsequently filed a Motion for Reconsideration assailing the dismissal of its appeal before the appellate court. In Petitioner's Motion for Reconsideration, it was averred that counsel for petitioner did not receive any notice to file its brief from the Court of Appeals as well as a copy of the letter of transmittal of the record from the clerk of the lower court to the Court of Appeals. Petitioner, thus, argued that this non-compliance by the clerk of the lower court in violation of Section 10 of Rule 41 of the Rules of Court caused the unwarranted confusion which actually deprived the petitioner of the means to know when the reglementary period to file its brief had commenced.

In a Resolution dated 1 March 2006, the Court of Appeals denied the Motion for Reconsideration in this wise:

> Finding no merit on oppositor-appellant's MOTION FOR RECONSIDERATION, dated December 5, 2005, considering that the Notice to File Brief, dated July 21, 2005, was sent to and received by the oppositor-appellant, through counsel, on August 1, 2005, as shown by the attached Registry Return Receipt (Back of p. 6, Rollo), and taking into consideration the Comment filed thereto by counsel for petitioner-appellee, We hereby DENY the motion. [6]

Hence, the instant petition.

Petitioner contends that the dismissal of its appeal by the Court of Appeals amounts to a denial of due process. Petitioner now explains in its petition before this Court that it's counsel failed to receive the Notice to file appellant's brief by "honest mistake" or "unforeseen accident" as the same was received and allegedly misplaced by one Angeline Diguinat, who was just a visiting relative of petitioner's counsel seeking financial assistance for the victims of the calamities in the province of Aurora. Moreover, petitioner contends that the Court of Appeals, in the interest of justice, equity and fair play, could have simply directed petitioner's counsel to show cause why he should not be cited for contempt for failure to comply with the order to file appellant's brief.

Rule 44, Section 7[7] of the Rules of Civil Procedure provides that it shall be the duty of the appellant to file his brief within 45 days from receipt of notice; and failure to comply with this mandate is a ground for the dismissal of the appeal as provided under Rule 50, Section 1(e)[8] of the Rules of Civil Procedure. In the instant case, there is no question that petitioner failed to file its appellant's brief despite notice which warranted the dismissal by the

appellate court of its appeal as ordained in the Rules of Court. However, petitioner maintains that such failure must be excused as it was occasioned by an "unforeseen accident" or "honest mistake" that petitioner's counsel did not receive the notice ordering it to file the appellant's brief. Thus, petitioner rationalizes, it is erroneous for the Court of Appeals to summarily dismiss the appeal (thereby depriving petitioner of due process) on the ground of failure to file appellant's brief within the reglementary period which could not have been possibly computed since petitioner's counsel did not receive the notice due to "honest mistake" or "unforeseen accident". Hence, petitioner was deprived of his due process right.

We find petitioner's postulations bereft of merit. As stated in the Resolution of the Court of Appeals dated 1 March 2006, the Registry Return Receipt shows that the Notice to File Brief, dated 21 July 2005, was sent to and received by petitioner, through counsel, on 1 August 2005. However, no appellant's brief was filed by petitioner until the Resolution dated 17 November 2005, dismissing the appeal was issued by the appellate court. Evidently, petitioner's counsel was negligent in failing to file the required appellant's brief within 45 days from receipt of said notice as mandated by the Rules of Court. Petitioner's counsel, nevertheless, would like to lay the blame at the door of one Angeline Diguinat, who allegedly was only visiting to solicit financial aid for victims of the calamities in Aurora. Petitioner's counsel explains that Angeline Diguinat, being unlearned and unaware of the significance of the letter, unconsciously or accidentally misplaced or misfiled the notice. Still hurting, petitioner's counsel explains in the Reply that he has no regular office assistant or secretary as he is alone in his law office which also serves as his residence.

Regrettably, such excuse of petitioner's counsel is unacceptable. It is the duty of a practicing lawyer to so arrange matters that official or judicial communications sent by mail reach him promptly.[9] For failure to do so, he and his clients must suffer the consequences of his negligence.[10] Furthermore, a lawyer can adopt an efficient way of handling court mail matters even if his residence also serves as his office.[11] Hence, if petitioner's counsel was not informed by his visiting relative of the Notice to File Brief, petitioner's counsel cannot hide behind his relative's negligence to excuse his own failure to adopt an efficient way of managing his court notices. That said, this Court cannot fault the Court of Appeals for dismissing the appeal which was done in faithful compliance with the rules of procedure the Court has been mandated to observe.

Nevertheless, in our desire to put an end to the present controversy, we have carefully perused the records of this case and have reached the conclusion that the order assailed is in perfect harmony with law and jurisprudence.

Petitioner Jetri Construction Corporation raises the validity of the foreclosure sale as a ground to attack the propriety of the issuance of the Writ of Possession. This is erroneous. This Court, in numerous decisions, has enunciated that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession.[12] Regardless of whether or not there is a pending suit for 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 said case.[13] 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.[14] In fact, petitioner itself has already commenced Civil Case No. 04-111298 before the RTC of Manila, Branch 50 for annulment of mortgage foreclosure. Therefore, the determination of the validity of said foreclosure sale is best left to the discretion of the court wherein said complaint has been filed.

More succinctly, the issuance of a writ of possession to a purchaser in a public auction is a ministerial act.[15] After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.[16] And its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.[17] It is undisputed that herein petitioner failed to redeem the property within the redemption period and thereafter, ownership was consolidated in favor of herein respondent and a new certificate

of title was issued in its name, particularly TCT No. 250654. Thus, it was purely ministerial for the trial court to issue a writ of possession in favor of herein respondent upon the latter's filing of a petition. The issue of nullity of the extrajudicial foreclosure sale was of no moment.[18] Said issue cannot bar the issuance of a writ of possession since, as stated above, any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of possession.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The Resolution of the Court of Appeals in CA-G.R. CV No. 84788 dismissing petitioner's appeal for failure of appellant to file its appellant's brief within the reglementary period despite notice is hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Ynares-Santiago, (Chairperson) Austria-Martinez, and Nachura, JJ., concur.

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta, concurring; rollo, p. 27.

[2] LRC Rec. No. 1197.

[3] Penned by Judge Socorro B. Inting.

[4] Rollo, pp. 19-22.

[5] Id. at 27.

[6] Id. at 35.

[7] SEC. 7. Appellant's brief. – It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

[8] SEC. 1. Grounds for dismissal of appeal. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules.

[9] Javier v. Madamba, Jr., G.R. No. 81157, 29 June 1989, 174 SCRA 495, 499.

[10] Id., citing Enriquez v. Bautista, 79 Phil. 220, 222 (1949).

[11] Gonzales v. Court of Appeals, 450 Phil. 296, 302 (2003).

[12]Sps. Ong v. Court of Appeals, 388 Phil. 857, 866-867 (2000); Mamerto Maniquiz Foundation, Inc. v. Pizarro, A.M. RTJ No. 03-1750 (Formerly OCA IPI No. 02-1431-RTJ), 14 January 2005, 448 SCRA 140, 151; Espiridion v. Court of Appeals, G.R. No. 146933, 8 June 2006, 490 SCRA 273, 277.

[13] Sps. Ong v. Court of Appeals, supra.

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

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[15] Espiridion v. Court of Appeals, supra note 12 at 276.

[16] Id. citing De Vera v. Agloro, G.R. No. 155673, 14 January 2005, 448 SCRA 203.

[17] De Vera v. Agloro, id. at 214.

[18] Id. at 214-215.

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