

BANK OF THE PHILIPPINE ISLANDS, PETITIONER, VS. SPS. HOMOBONO AND LUZDELDIA TARAMPI, RESPONDENTS.

G.R. No. 174988. December 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In 1995, spouses Homobono and Luzdeldia Tarampi (respondents) obtained loans from Bank of Philippine Islands (petitioner) in the total amount of P19,000,000, which were secured by four sets of real estate mortgage over a parcel of land located at Tandang Sora, Quezon City, with an area of 796 square meters and covered by Transfer Certificate of Title (TCT) No. 122627 issued by the Registry of Deeds of Quezon City.[1]

Respondents defaulted on their obligation, prompting petitioner to institute extrajudicial foreclosure proceedings. At the auction sale on February 8, 1999, the mortgaged property was sold to petitioner as the highest bidder. A Certificate of Sale[2] was thereupon issued to petitioner which was registered and annotated on the TCT.

As the redemption period expired without respondents redeeming the mortgages, petitioner, through its Vice-President Jocelyn C. Sta. Ana, executed an Affidavit of Consolidation.[3] TCT No. 122627 was thus cancelled and TCT No. N-216396[4] was in its stead issued in the name of petitioner on July 27, 2000.

Petitioner thereafter filed on October 9, 2000 an Ex Parte Petition for Writ of Possession[5] over the property including all the improvements thereon, docketed as LRC Case No. Q-13412(00), which was raffled to Branch 105 of the RTC of Quezon City.

By Order of October 1, 2001,[6] Branch 105 granted petitioner's Ex Parte Petition for the issuance of Writ of Possession. Acting on respondents' "urgent motion for leave to admit attached opposition and dismissal of petition [for issuance of writ of possession]" filed on November 23, 2001 due to the pendency, before Branch 220 also of the RTC of Quezon City, of an action for annulment of the real estate mortgages, Civil Case No. Q-00-41440, Branch 105, by Order of December 18, 2002,[7] suspended the implementation of the writ of possession until the determination of the validity of the mortgages by Branch 220.

On petitioner's Motion for Reconsideration,[8] Branch 105 recalled its Order of December 18, 2002, by Order of August 6, 2003,[9] and set for hearing respondents' Opposition to the petition for issuance of writ of possession which Opposition it treated as a petition under Section 8 of Act No. 3135, as amended reading:

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. (Underscoring supplied)

In the meantime, petitioner filed a Motion for Immediate Implementation of the Writ of Possession,[10] which Branch 105 granted by Order of February 7, 2006.[11] In the same Order, the court ordered that respondents' Opposition to the issuance be "consolidated with Civil Case No. Q-00-41440 [for Annulment of Mortgages] pending at Branch 220."

On February 24, 2006, respondents filed a Notice of Appeal[12] of the Order dated February 7, 2006 of Branch 105 granting the implementation of the writ of possession. Petitioner opposed,[13] arguing primarily that the motion for the issuance of a writ of possession is ex parte and the order granting is interlocutory, hence, not appealable. To this respondents filed a Reply,[14] maintaining that their right to appeal is based on Section 14 of Act No. 496, otherwise known as The Land Registration Act.[15]

Branch 220 to which respondents' Opposition was referred, as earlier stated, for consolidation with the annulment of mortgages case, by Order dated June 30, 2006,[16] gave due course to respondents' Notice of Appeal. Petitioner's Motion for Reconsideration[17] of the June 30, 2006 Order of Branch 220 having been denied by Order of September 27, 2006,[18] it comes before this Court via the present petition for review on certiorari.

In the meantime, the Court of Appeals, to which respondents appealed the Order of Branch 105 granting the implementation of the writ of possession, dismissed the appeal, by Decision dated May 27, 2008 in CA-G.R. CV. No. 87902.[19] It held, among other things, that since petitioner is now the registered owner of the property, it is entitled to a writ of possession as a matter of right; and that any question regarding the validity of the mortgages or their foreclosure cannot be a legal ground for refusing the issuance of a writ of possession after the consolidation of title in the buyer's name, following the debtor-mortgagor-respondents' failure to redeem the mortgages, citing *Idolor v. Court of Appeals*. [20]

The issues for resolution are thus (1) whether Branch 220 erred in giving due course to respondents' Notice of Appeal from Branch 105's Order granting petitioner's motion for immediate implementation of the writ of possession, and (2) whether the writ of possession should be implemented during the pendency of the case for annulment of mortgages.

Petitioner maintains that the proceedings in the issuance of a writ of possession are ex parte in nature,[21] and the order granting the issuance of a writ of possession is not appealable as it is merely interlocutory. And it posits that since it is already the registered owner of the subject property, its right to possession has become unquestionable.[22]

Respondents, on the other hand, counter that the real estate mortgages over the subject property do not clearly set out their legal obligation, hence, the extrajudicial foreclosure was not justified; and that a writ of possession cannot issue in favor of petitioner before the annulment case is decided by Branch 220.[23]

The Court finds that Branch 220 did not err in giving due course to respondents' Notice of Appeal. In *Metropolitan Bank and Trust Company v. Tan*, [24] the Court, resolving the issue of whether it is an appeal or a petition for certiorari that is the proper remedy to assail an order granting a writ of possession to the purchaser of mortgaged property subject of an extrajudicial foreclosure in accordance with Act No. 3135, held:

Finally, we agree with Metrobank's contention that the trial court's order granting the writ of possession is final. The proper remedy for respondents is an appeal and not a petition for certiorari. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctable by an appeal if the aggrieved party raised factual and legal issues; or a petition for review under Rule 45 of the Rules of Court if only questions of law are involved.

In the case at bar, respondents failed to redeem the mortgages within the reglementary period, hence, ownership of the property covered thereby was consolidated in the name of petitioner who had in fact been issued a new TCT. Issuance of a writ of possession thus became a ministerial duty of the court.

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. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance 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.[25] (Emphasis and underscoring supplied)

Branch 105 need not, under the circumstances, look into the validity of the mortgages or the manner of their foreclosure.[26] The writ issues as a matter of course, and the court neither exercises its official discretion nor judgment.[27]

The rationale for the rule is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on the right of ownership.[28] To underscore this mandate, the law further provides that the debtor-mortgagor may petition that the sale be set aside and the writ of possession cancelled in the proceedings in which possession was requested; and the court's decision thereon may be appealed by either party, but the order of possession shall continue in effect during the pendency of the appeal.[29]

To stress the ministerial character of the writ of possession, the Court has disallowed injunction to prohibit its issuance, just as it has held that its issuance may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.[30]

Clearly then, until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, the issuance of a writ of possession remains the ministerial duty of the trial court.[31] The same is true with its implementation; otherwise, the writ will be a useless paper judgment - a result inimical to the mandate of Act No. 3135 to vest possession in the purchaser immediately.

WHEREFORE, the petition is **PARTIALLY GRANTED**. Branch 105 of the Regional Trial Court of Quezon City, which issued the Writ of Possession in favor of petitioner, is directed to immediately proceed with the implementation thereof.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Records, pp. 79-115, 117.

[2] Id. at 12.

[3] Id. at 15-16.

[4] Id. at 17.

[5] Id. at 1-3.

[6] Id. at 20.

[7] Id. at 267-271.

[8] Id. at pp. 272-274.

[9] Id. at 343-347.

[10] Id. at 424-426.

[11] Id. at 634-637.

[12] Id. at 640-642.

[13] Id. at 644-647.

[14] Id. at 648-653.

[15] Section 14 of Act No. 496 provides in relevant part:

SEC. 14. Every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, or judgment of a Court of First Instance might be reviewed x x x

[16] Records, p. 654.

[17] Id. at 656-659.

[18] Id. at 809.

[19] Rollo, pp. 334-341.

[20] G.R. No. 161028, January 31, 2005, 450 SCRA 396.

[21] Rollo, pp. 10-11.

[22] Id. at 13.

[23] Id. at 220-227.

[24] G.R. No. 159934, June 26, 2008.

[25] *Sueno v. Land Bank of the Philippines*, G.R. No. 174711, September 17, 2008.

[26] *Fernandez v. Sps. Espinoza*, G.R. No. 156421, April 14, 2008, 551 SCRA 136.

[27] *Vide Dayrit v. Philippine Bank of Communications*, 435 Phil. 120 (2002); *A.G. Development Corporation v. Court of Appeals*, 346 Phil. 136 (1997).

[28] *Vide Sps. Ong v. Court of Appeals*, 388 Phil. 857 (2000).

[29] Section 8, Act No. 3135, as amended by Act No. 4118.

[30] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[31] *Chailease Finance Corporation v. Sps. Ma*, 456 Phil. 498 (2003).

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