

BPI FAMILY SAVINGS BANK, INC., PETITIONER, VS. GOLDEN POWER DIESEL SALES CENTER, INC. AND RENATO C. TAN, RESPONDENTS.*G.R. No. 176019. January 12, 2011*

Ponente: CARPIO, J.

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This is a petition for review[1] of the 13 March 2006 Decision[2] and 19 December 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 78626. In its 13 March 2006 Decision, the Court of Appeals denied petitioner BPI Family Savings Bank, Inc.'s (BPI Family) petition for mandamus and certiorari. In its 19 December 2006 Resolution, the Court of Appeals denied BPI Family's motion for reconsideration.

The Facts

On 26 October 1994, CEDEC Transport, Inc. (CEDEC) mortgaged two parcels of land covered by Transfer Certificate of Title (TCT) Nos. 134327 and 134328 situated in Malibay, Pasay City, including all the improvements thereon (properties), in favor of BPI Family to secure a loan of P6,570,000. On the same day, the mortgage was duly annotated on the titles under Entry No. 94-2878. On 5 April and 27 November 1995, CEDEC obtained from BPI Family additional loans of P2,160,000 and P1,140,000, respectively, and again mortgaged the same properties. These latter mortgages were duly annotated on the titles under Entry Nos. 95-6861 and 95-11041, respectively, on the same day the loans were obtained.

Despite demand, CEDEC defaulted in its mortgage obligations. On 12 October 1998, BPI Family filed with the ex-officio sheriff of the Regional Trial Court of Pasay City (RTC) a verified petition for extrajudicial foreclosure of real estate mortgage over the properties under Act No. 3135, as amended.[4]

On 10 December 1998, after due notice and publication, the sheriff sold the properties at public auction. BPI Family, as the highest bidder, acquired the properties for P13,793,705.31. On 14 May 1999, the Certificate of Sheriff's Sale, dated 24 February 1999, was duly annotated on the titles covering the properties.

On 15 May 1999, the one-year redemption period expired without CEDEC redeeming the properties. Thus, the titles to the properties were consolidated in the name of BPI Family. On 13 September 2000, the Registry of Deeds of Pasay City issued new titles, TCT Nos. 142935 and 142936, in the name of BPI Family.

However, despite several demand letters, CEDEC refused to vacate the properties and to surrender possession to BPI Family. On 31 January 2002, BPI Family filed an Ex-Parte Petition for Writ of Possession over the properties with Branch 114 of the Regional Trial Court of Pasay City (trial court). In its 27 June 2002 Decision, the trial court granted BPI Family's petition.[5] On 12 July 2002, the trial court issued the Writ of Possession.

On 29 July 2002, respondents Golden Power Diesel Sales Center, Inc. and Renato C. Tan[6] (respondents) filed a

Motion to Hold Implementation of the Writ of Possession.[7] Respondents alleged that they are in possession of the properties which they acquired from CEDEC on 10 September 1998 pursuant to the Deed of Absolute Sale with Assumption of Mortgage (Deed of Sale).[8] Respondents argued that they are third persons claiming rights adverse to CEDEC, the judgment obligor and they cannot be deprived of possession over the properties. Respondents also disclosed that they filed a complaint before Branch 111 of the Regional Trial Court of Pasay City, docketed as Civil Case No. 99-0360, for the cancellation of the Sheriff's Certificate of Sale and an order to direct BPI Family to honor and accept the Deed of Absolute Sale between CEDEC and respondents.[9]

On 12 September 2002, the trial court denied respondents' motion.[10] Thereafter, the trial court issued an alias writ of possession which was served upon CEDEC and all other persons claiming rights under them.

However, the writ of possession expired without being implemented. On 22 January 2003, BPI Family filed an Urgent Ex-Parte Motion to Order the Honorable Branch Clerk of Court to Issue Alias Writ of Possession. In an Order dated 27 January 2003, the trial court granted BPI Family's motion.

Before the alias writ could be implemented, respondent Renato C. Tan filed with the trial court an Affidavit of Third Party Claim[11] on the properties. Instead of implementing the writ, the sheriff referred the matter to the trial court for resolution.

On 11 February 2003, BPI Family filed an Urgent Motion to Compel Honorable Sheriff and/or his Deputy to Enforce Writ of Possession and to Break Open the properties. In its 7 March 2003 Resolution, the trial court denied BPI Family's motion and ordered the sheriff to suspend the implementation of the alias writ of possession.[12] According to the trial court, "the order granting the alias writ of possession should not affect third persons holding adverse rights to the judgment obligor." The trial court admitted that in issuing the first writ of possession it failed to take into consideration respondents' complaint before Branch 111 claiming ownership of the property. The trial court also noted that respondents were in actual possession of the properties and had been updating the payment of CEDEC's loan balances with BPI Family. Thus, the trial court found it necessary to amend its 12 September 2002 Order and suspend the implementation of the writ of possession until Civil Case No. 99-0360 is resolved.

BPI Family filed a motion for reconsideration. In its 20 June 2003 Resolution, the trial court denied the motion.[13]

BPI Family then filed a petition for mandamus and certiorari with application for a temporary restraining order or preliminary injunction before the Court of Appeals. BPI Family argued that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it ordered the suspension of the implementation of the alias writ of possession. According to BPI Family, it was the ministerial duty of the trial court to grant the writ of possession in its favor considering that it was now the owner of the properties and that once issued, the writ should be implemented without delay.

The Court of Appeals dismissed BPI Family's petition. The dispositive portion of the 13 March 2006 Decision reads:

WHEREFORE, the instant Petition for Writ of Mandamus and Writ of Certiorari with Application for a TRO and/or Preliminary Injunction is hereby DENIED. The twin Resolutions dated March 7, 2003 and June 20, 2003, both issued by the public respondent in LRC Case No. 02-0003, ordering the sheriff to suspend the implementation of the Alias Writ of Possession issued in favor of the petitioner, and denying its Urgent Omnibus Motion thereof, respectively, are hereby AFFIRMED.

SO ORDERED.[14]

BPI Family filed a motion for reconsideration. In its 19 December 2006 Resolution, the Court of Appeals denied the motion.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the trial court did not commit grave abuse of discretion in suspending the implementation of the alias writ of possession because respondents were in actual possession of the properties and are claiming rights adverse to CEDEC, the judgment obligor. According to the Court of Appeals, the principle that the implementation of the writ of possession is a mere ministerial function of the trial court is not without exception. The Court of Appeals held that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor or mortgagor.

The Issues

BPI Family raises the following issues:

A.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE FINDING OF THE HONORABLE REGIONAL TRIAL COURT THAT DESPITE THE FACT THAT PRIVATE RESPONDENTS MERELY STEPPED INTO THE SHOES OF MORTGAGOR CEDEC, BEING THE VENDEE OF THE PROPERTIES IN QUESTION, THEY ARE CATEGORIZED AS THIRD PERSONS IN POSSESSION THEREOF WHO ARE CLAIMING A RIGHT ADVERSE TO THAT OF THE DEBTOR/MORTGAGOR CEDEC.

B.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN SUSTAINING THE AFOREMENTIONED TWIN ORDERS SUSPENDING THE IMPLEMENTATION OF THE WRIT OF POSSESSION ON THE GROUND THAT THE ANNULMENT CASE FILED BY PRIVATE RESPONDENTS IS STILL PENDING DESPITE THE ESTABLISHED RULING THAT PENDENCY OF A CASE QUESTIONING THE LEGALITY OF A MORTGAGE OR AUCTION SALE CANNOT BE A GROUND FOR THE NON-ISSUANCE AND/OR NON-IMPLEMENTATION OF A WRIT OF POSSESSION.[15]

The Ruling of the Court

The petition is meritorious.

BPI Family argues that respondents cannot be considered "a third party who is claiming a right adverse to that of the debtor or mortgagor" because respondents, as vendee, merely stepped into the shoes of CEDEC, the vendor and judgment obligor. According to BPI Family, respondents are mere extensions or successors-in-interest of CEDEC. BPI Family also argues that the pendency of an action questioning the validity of a mortgage or auction sale cannot be a ground to oppose the implementation of a writ of possession.

On the other hand, respondents insist that they are third persons who claim rights over the properties adverse to CEDEC. Respondents argue that the obligation of the court to issue an ex parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the judgment obligor.

In extrajudicial foreclosures of real estate mortgages, the issuance of a writ of possession is governed by Section 7

of Act No. 3135, as amended, which provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (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 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 the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by 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.

This procedure may also be availed of by the purchaser seeking possession of the foreclosed property bought at the public auction sale after the redemption period has expired without redemption having been made.[16]

In *China Banking Corporation v. Lozada*,[17] we ruled:

It is thus 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 the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. The buyer can in fact demand possession of the land even during the redemption period except that he has to post a bond in accordance with Section 7 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed. 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.[18] (Emphasis supplied)

Thus, the general rule is that a purchaser in a public auction sale of a foreclosed property is entitled to a writ of possession and, upon an ex parte petition of the purchaser, it is ministerial upon the trial court to issue the writ of possession in favor of the purchaser.

There is, however, an exception. Section 33, Rule 39 of the Rules of Court provides:

Section 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. -
x x x

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (Emphasis supplied)

Therefore, in an extrajudicial foreclosure of real property, when the foreclosed property is in the possession of a third party holding the same adversely to the judgment obligor, the issuance by the trial court of a writ of possession in favor of the purchaser of said real property ceases to be ministerial and may no longer be done ex parte.[19] The procedure is for the trial court to order a hearing to determine the nature of the adverse possession.[20] For the exception to apply, however, the property need not only be possessed by a third party, but also held by the third party adversely to the judgment obligor.

In this case, BPI Family invokes the general rule that they are entitled to a writ of possession because respondents are mere successors-in-interest of CEDEC and do not possess the properties adversely to CEDEC. Respondents, on the other hand, assert the exception and insist that they hold the properties adversely to CEDEC and that their possession is a sufficient obstacle to the ex parte issuance of a writ of possession in favor of BPI Family.

Respondents' argument fails to persuade the Court. It is clear that respondents acquired possession over the properties pursuant to the Deed of Sale which provides that for P15,000,000 CEDEC will "sell, transfer and convey" to respondents the properties "free from all liens and encumbrances excepting the mortgage as may be subsisting in favor of the BPI FAMILY SAVINGS BANK." [21] Moreover, the Deed of Sale provides that respondents bind themselves to assume "the payment of the unpaid balance of the mortgage indebtedness of the VENDOR (CEDEC) amounting to P7,889,472.48, as of July 31, 1998, in favor of the aforementioned mortgagee (BPI Family) by the mortgage instruments and does hereby further agree to be bound by the precise terms and conditions therein contained." [22]

In *Roxas v. Buan*, [23] we ruled:

It will be recalled that Roxas' possession of the property was premised on its alleged sale to him by Valentin for the amount of P100,000.00. Assuming this to be true, it is readily apparent that Roxas holds title to and possesses the property as Valentin's transferee. Any right he has to the property is necessarily derived from that of Valentin. As transferee, he steps into the latter's shoes. Thus, in the instant case, considering that the property had already been sold at public auction pursuant to an extrajudicial foreclosure, the only interest that may be transferred by Valentin to Roxas is the right to redeem it within the period prescribed by law. Roxas is therefore the successor-in-interest of Valentin, to whom the latter had conveyed his interest in the property for the purpose of redemption. Consequently, Roxas' occupancy of the property cannot be considered adverse to Valentin. [24]

In this case, respondents' possession of the properties was premised on the sale to them by CEDEC for the amount of P15,000,000. Therefore, respondents hold title to and possess the properties as CEDEC's transferees and any right they have over the properties is derived from CEDEC. As transferees of CEDEC, respondents merely stepped into CEDEC's shoes and are necessarily bound to acknowledge and respect the mortgage CEDEC had earlier executed in favor of BPI Family. [25] Respondents are the successors-in-interest of CEDEC and thus, respondents' occupancy over the properties cannot be considered adverse to CEDEC.

Moreover, in *China Bank v. Lozada*, [26] we discussed the meaning of "a third party who is actually holding the property adversely to the judgment obligor." We stated:

The exception provided under Section 33 of Rule 39 of the Revised Rules of Court contemplates a situation in which a third party holds the property by adverse title or right, such as that of a co-owner, tenant or usufructuary. The co-owner, agricultural tenant, and usufructuary possess the property in their own right, and they are not merely the successor or transferee of the right of possession of another co-owner or the owner of the property. [27]

In this case, respondents cannot claim that their right to possession over the properties is analogous to any of these. Respondents cannot assert that their right of possession is adverse to that of CEDEC when they have no independent right of possession other than what they acquired from CEDEC. Since respondents are not holding the properties adversely to CEDEC, being the latter's successors-in-interest, there was no reason for the trial court to order the suspension of the implementation of the writ of possession.

Furthermore, it is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. [28] The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. [29] The purchaser is entitled to

a writ of possession without prejudice to the outcome of the pending annulment case.[30]

In this case, the trial court erred in issuing its 7 March 2003 Order suspending the implementation of the alias writ of possession. Despite the pendency of Civil Case No. 99-0360, the trial court should not have ordered the sheriff to suspend the implementation of the writ of possession. BPI Family, as purchaser in the foreclosure sale, is entitled to a writ of possession without prejudice to the outcome of Civil Case No. 99-0360.

WHEREFORE, we GRANT the petition. We SET ASIDE the 13 March 2006 Decision and the 19 December 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 78626. We SET ASIDE the 7 March and 20 June 2003 Resolutions of the Regional Trial Court, Branch 114, Pasay City. We ORDER the sheriff to proceed with the implementation of the writ of possession without prejudice to the outcome of Civil Case No. 99-0360.

SO ORDERED.

Nachura, Peralta, Abad, and Mendoza, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 8-17. Penned by Associate Justice Noel G. Tijam, with Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo concurring.

[3] Id. at 19.

[4] An Act To Regulate The Sale Of Property Under Special Powers Inserted In Or Annexed To The Real Estate Mortgages. Approved on 6 March 1924.

[5] Rollo, pp. 58-61.

[6] Respondent Renato C. Tan is the President and Chief Executive Officer of Golden Power.

[7] Rollo, pp. 62-64.

[8] Id. at 133-135.

[9] Id. at 65-77. Entitled "Golden Power Diesel Sales Center, Inc. and Renato C. Tan v. BPI Family Savings Bank, Inc., Elvira A. Lim, CEDEC Transport Corporation, Pepito S. Celestino as Clerk of Court of the Regional Trial Court of Pasay City and as Ex-officio Sheriff, and Deputy Sheriff Severino DC Balubar, Jr."

[10] Id. at 80-83.

[11] Id. at 85-88.

[12] Id. at 89-93.

[13] Id. at 94-98.

[14] Id. at 17.

[15] Id. at 32.

[16] China Banking Corporation v. Lozada, G.R. No. 164919, 4 July 2008, 557 SCRA 177, citing IFC Service Leasing and Acceptance Corporation v. Nera, 125 Phil. 595 (1967).

[17] Id.

[18] Id. at 196.

[19] Philippine National Bank v. Court of Appeals, 424 Phil. 757 (2002), citing Barican v. Intermediate Appellate Court, 245 Phil. 316 (1988).

[20] Unchuan v. Court of Appeals, 244 Phil. 733 (1988).

[21] Rollo, p. 135.

[22] Id.

[23] 249 Phil. 41 (1988).

[24] Id. at 47-48. Citations omitted.

[25] Spouses Paderes v. Court of Appeals, 502 Phil. 76 (2005).

[26] Supra note 16.

[27] Id. at 202-204. Citations omitted.

[28] Fernandez v. Espinoza, G.R. No. 156421, 14 April 2008, 551 SCRA 136; Idolor v. Court of Appeals, 490 Phil. 808 (2005); Samson v. Rivera, G.R. No. 154355, 20 May 2004, 428 SCRA 759.

[29] Idolor v. Court of Appeals, supra.

[30] Spouses Ong v. Court of Appeals, 388 Phil. 857 (2000).

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