MARTIN T. SAGARBARRIA, PETITIONER, VS. PHILIPPINE BUSINESS BANK, RESPONDENT.

G.R. No. 178330. July 23, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For resolution is petitioner's motion for reconsideration urging this Court to reconsider its Decision promulgated on January 21, 2008, viz.:

> Considering the petition for review on certiorari, as well as the comment thereon, the Court resolves to DENY the petition for failure to sufficiently show that the appellate court committed reversible error in the challenged decision and resolution as to warrant the exercise by this Court of its discretionary appellate jurisdiction.[1]

The antecedents.

Petitioner Martin Sagarbarria (petitioner) executed a deed of real estate mortgage over his property in San Lorenzo Village, Makati City, in favor of the respondent Philippine Business Bank (PBB) to secure the P11,500,000.00 loan of Key Commodities Inc. (Key Commodities).

When the loan became due and demandable, Key Commodities failed to pay the same. Consequently, on February 28, 2003, PBB filed an application for foreclosure with the Office of the Clerk of Court and Ex-Officio Sheriff of Makati. The auction sale was then set on March 28, 2003 and a notice of sale was issued.

To enjoin the PBB from proceeding with the foreclosure, petitioner filed a complaint for the Annulment of Real Estate Mortgage, Nullification of Application for Extrajudicial Foreclosure of Real Estate Mortgage and Damages, with prayer for the immediate issuance of a Temporary Restraining Order (TRO) and/or Preliminary Injunction[2] with the Regional Trial Court (RTC) of Makati City. It was docketed as Civil Case No. 03-312 and was raffled to Branch 64. Petitioner succeeded in pre-empting the auction sale as PBB withdrew its application for extra-judicial foreclosure.

On October 30, 2003, PBB filed an Answer[3] in Civil Case No. 03-312. Traversing petitioner's complaint, PBB contended that there was no factual and legal basis for the annulment of the mortgage. By way of counterclaim, PBB prayed for the payment of the mortgage loan which had already reached P18,000,000.00.

On February 24, 2005, while the annulment case remained pending, PBB revived the remedy of foreclosure. It filed a petition[4] for extrajudicial foreclosure, supplementing the facts stated in its first application, as follows: (i) as of February 2005, the obligation had ballooned to P30,000,000.00; (ii) the offer of dacion en pago was rejected and another demand to pay was served on the petitioner; and (iii) the petitioner's address was already 22 Joaquin Street, San Lorenzo Village Makati.

The petition was granted and a notice of sale was issued setting the auction sale on March 28, 2005. The sale proceeded and the property was awarded to the PBB as the sole bidder for P13,000,000.00. A certificate of sale was issued in favor of the PBB and was registered with the Registry of Deeds on March 29, 2005.

In April 2005, respondent filed a petition for the issuance of a writ of possession with the RTC of Makati, docketed as LRC Case No. M-4676 and raffled to Branch 145. Despite the ex parte nature of the proceeding, the RTC was able to give due course to the petition only after a year or on April 27, 2006. The RTC granted the petition and ordered the issuance of a writ of possession in favor of PBB upon the latter's posting of a bond of P13,000,000.00.[5] However, after being informed that the redemption period had already expired and PBB had consolidated its ownership over the subject property on April 20, 2006, the RTC amended its decision on May 29, 2006 by deleting the requirement of a bond. On the same day, a writ of possession[6] was issued in favor of PBB.

Petitioner assailed the issuance of the writ by filing a petition for certiorari with the CA. It likewise sought the annulment of the extrajudicial proceedings on the ground that it was conducted and issued without notice and in violation of the rule against forum shopping. Petitioner claimed that he was effectively denied his right to participate in the foreclosure proceedings when the notice of sale was forwarded to him at a different address, despite knowledge of his actual address. He also claimed that the PBB committed forum-shopping when it filed an application for judicial foreclosure during the pendency of the civil case for annulment of mortgage. By opting to collect on its credit through a counterclaim in the case for annulment of mortgage, it had already waived the remedy of extrajudicial foreclosure.

By Decision[7] dated November 22, 2006, the Court of Appeals (CA) affirmed PBB's entitlement to a writ of possession as a matter of right. The CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court. It added that the right of the purchaser to the immediate possession of the property cannot be defeated by the pendency of a case for annulment of the mortgage. The CA likewise rejected the claim of forum shopping, holding that to pursue an action, which has a different cause of action, or a remedy that the law allows to be taken despite the existence of another action, is not forum shopping. Finally, it ruled that certiorari is not a proper remedy because Section 8 of Act No. 3135 provides for an adequate remedy against an invalid or irregular foreclosure. Hence, petitioner should have filed a petition under Section 8[8] of Act No. 3135, and in case of an adverse ruling, an appeal from the said adverse decision. The rule is explicit that certiorari may only be allowed where there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. Although the rule admits of several exceptions, none of them are in point in petitioner's case. Petitioner filed a motion for reconsideration, but the CA denied the same in its June 6, 2007 Resolution.[9]

Petitioner came to us, faulting the CA for dismissing his petition for certiorari. On January 21, 2008, this Court denied the petition for failure to sufficiently show that the CA had committed any reversible error in the assailed Decision and Resolution to warrant the exercise by this Court of its discretionary appellate jurisdiction.[10]

Petitioner then filed a Motion for Reconsideration (With Motion to Elevate the Case to the Supreme Court en Banc).[11] In its June 16, 2008 Resolution,[12] this Court required PBB to comment on the motion for reconsideration, but denied petitioner's motion to elevate the case to the Court en banc.

In the main, petitioner argues that the RTC committed grave abuse of discretion in granting the writ of possession despite the invalidity of the foreclosure proceedings. Thus, he posits that the CA committed reversible error in dismissing his petition for certiorari. Petitioner urges us to reconsider our Resolution denying the appeal.

At the outset, it must be emphasized that what is on appeal before us is only the issuance of the writ of possession over the subject property issued by the RTC, Branch 145, in LRC Case No. M-4676.

Under Sec. 7 of Act No. 3135,[13] a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.[14]

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Within the one-year redemption period, a purchaser in a foreclosure sale may apply for a writ of possession by filing a petition in the form of an ex parte motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law, also in express terms, directs the court to issue the order for a writ of possession.[15]

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property. Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made. In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.[16]

In the present case, petitioner failed to redeem the property within one (1) year from the registration of the Sheriff's Certificate of Sale with the Register of Deeds. PBB, being the purchaser of the property at public auction, thus, had the right to file an ex parte motion for the issuance of a writ of possession; and considering that it was its ministerial duty to do so, the trial court had to grant the motion and to thereafter issue the writ of possession.

We reject the petitioner's contention that he was denied due process when the trial court issued the writ of possession without notice.

It is settled that the proceeding in a petition for a writ of possession is ex parte and summary in nature. It is a judicial proceeding brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding wherein relief is granted without an opportunity for the person against whom the relief is sought to be heard.[17] No notice is needed to be served upon persons interested in the subject property. Hence, there is no necessity of giving notice to the petitioner since he had already lost all his interests in the property when he failed to redeem the same.[18] Accordingly, the RTC may grant the petition in the absence of the mortgagor, in this case, the petitioner.

Neither was there a need for the court to suspend the proceedings merely and solely because of the pendency of the complaint for the nullification of the real estate mortgage and the foreclosure proceedings. As held by this Court in Fernandez v. Espinoza:[19]

> [A]ct No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.
>
> Consequently, the RTC under which the application for the issuance of a writ of possession over the subject property is pending cannot defer the issuance of the said writ in view of the pendency of an action for annulment of mortgage and foreclosure sale. The judge with whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure.
>
> 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.
>
> The spouses Espinoza's position that the issuance of the writ of possession must be deferred pending resolution of Civil Case No. 66256 is therefore unavailing. As we have recounted above, this Court has long settled that a

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> pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession.

Ineluctably, the RTC, Branch 145, which issued the writ of possession, cannot be adjudged to have committed grave abuse of discretion; nor can its order directing the issuance of said writ be considered patently illegal, for, a fortiori, there is no discretion involved in its issuance of such an order, it being the ministerial duty of the trial court under the circumstances.

We agree with the CA that petitioner pursued the incorrect remedy of certiorari. A special civil action for certiorari may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Absent grave abuse of discretion, petitioners should have filed an ordinary appeal instead of a petition for certiorari. The soundness of the order granting the writ of possession is a matter of judgment, with respect to which the remedy of the party aggrieved is ordinary appeal. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as "grave abuse of discretion." Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by certiorari.[20]

In fine, we find no substantial argument that would warrant a reconsideration of our January 21, 2008 Resolution denying the appeal.

WHEREFORE, the Motion for Reconsideration is DENIED WITH FINALITY.

SO ORDERED.

Ynares-Santiago, (Chairperson), Corona,[*] Chico-Nazario, and Velasco, Jr., JJ., concur.

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[*] Vice Justice Diosdado M. Peralta whose spouse concurred in the assailed Court of Appeals resolution.

[1] Rollo, p. 318-A.

[2] Id. at 59-77.

[3] Id. at 80-89.

[4] Id. at 90-93.

[5] Id. at 98-99.

[6] Id. at 100-101.

[7] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Roberto A. Barrios (deceased) and Lucenito N. Tagle (retired), concurring, id. at 46-52.

[8] Section 8. Setting aside of sale and writ of possession. - 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.

[9] Rollo, p. 54.

[10] Supra note 1.

[11] Id. at 341-372.

[12] Id. at 374.

[13] Section 7. Possession during redemption period. - In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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.

[14] Philippine National Bank v. Sanao Marketing Corporation, G.R. No. 153951, July 29, 2005, 465 SCRA 287, 300

[15] Saguan v. Philippine Bank of Communications, G.R. No. 159882, November 23, 2007, 538 SCRA 390, 396.

[16] Id. at 396-397.

[17] Santiago v. Merchant Rural Bank of Talavera, Inc., G.R. No. 147820, March 18, 2005, 453 SCRA 756, 763-764.

[18] De Vera v. Agloro, G.R. No. 155673, January 14, 2005, 448 SCRA 203, 215.

[19] G.R. No. 156421, April 14, 2008, 551 SCRA 136, 149-150.

[20] Saguan v. Philippine Bank of Communications, supra at 402-403.

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