

**SPOUSES NORMAN K. CERTEZA, JR. AND MA. ROSANILA V. CERTEZA,
AND AMADA P. VILLAMAYOR AND HERMINIO VILLAMAYOR, JR.,
PETITIONERS, VS. PHILIPPINE SAVINGS BANK, RESPONDENT.**

G.R. No. 190078. March 05, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In this Petition for Review on Certiorari,[1] petitioners contend that the auction sale conducted by virtue of the extrajudicial foreclosure of the mortgage should be declared null and void for failure to comply with the two-bidder rule.

Factual Antecedents

Petitioners obtained a P1,255,000.00 loan from respondent Philippine Savings Bank (PS Bank),[2] secured by two parcels of land, with all the buildings and improvements existing thereon, covered by Transfer Certificate of Title Nos. N-208706 and N-208770.[3]

Petitioners failed to pay their outstanding obligation despite demands hence PS Bank instituted on May 8, 2002, an action for Extrajudicial Foreclosure of the Real Estate Mortgage pursuant to Act No. 3135,[4] as amended.

During the auction sale conducted on February 18, 2003, PS Bank emerged as the sole and highest bidder.[5] A corresponding Certificate of Sale dated February 20, 2003 was issued in favor of PS Bank, which was registered with the Registry of Deeds of Quezon City on March 25, 2003.[6]

During the period of redemption, on December 1, 2003, PS Bank filed an Ex-parte Petition[7] for Writ of Possession with the Regional Trial Court (RTC) of Quezon City, which was granted in an Order[8] dated September 21, 2004, after the period of redemption for the foreclosed property had already expired.

On January 20, 2005, petitioners filed an Omnibus Motion for Leave to Intervene and to Stay Issuance or Implementation of Writ of Possession,[9] attaching therein their Petition-in-Intervention[10] pursuant to Sec. 8 of Act No. 3135. They sought the nullification of the extrajudicial foreclosure sale for allegedly having been conducted in contravention of the procedural requirements prescribed in A.M. No. 99-10-05-0 (Re: Procedure in Extrajudicial Foreclosure of Real Estate Mortgages) and in violation of herein petitioners' right to due process.

PS Bank opposed[11] the motion citing *Manalo v. Court of Appeals*[12] where we held that "(T)he issuance of an order granting the writ of possession is in essence a rendition of judgment within the purview of Section 2, Rule 19 of the Rules of Court." PS Bank also argued that with the issuance of the trial court's Order on September 21, 2004, the Motion for Leave to Intervene can no longer be entertained.[13]

The petitioners filed their Reply[14] arguing that the filing of their petition before the court where possession was requested was pursuant to Sec. 8 of Act No. 3135.

Ruling of the Regional Trial Court

On March 3, 2005, the RTC of Quezon City, Branch 217, issued an Order[15] denying the motion for intervention and to stay the implementation of the writ, to wit:[16]

The issuance of writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial. In *PNB vs. Adil*, 118 SCRA 116 (1982), the Supreme Court held that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The Court found it gross error for the judge to have suspended the implementation of the writ of possession on a very dubious ground as "humanitarian reason."

WHEREFORE, premises considered, the motion to intervene and to stay the implementation of the writ of possession is hereby denied.

Petitioners filed a motion for reconsideration[17] but the motion was denied in the Order dated May 9, 2005.

Ruling of the Court of Appeals

Petitioners filed a Petition for Certiorari with the Court of Appeals (CA) on June 8, 2005 imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in denying their motion to intervene and to stay the implementation of the writ.[18] The CA, in its Decision[19] dated May 8, 2009, found that (1) the issuance of a writ of possession is a ministerial function; (2) there was no irregularity in the foreclosure sale; (3) the denial of the motion to intervene is proper; and (4) certiorari is not the proper remedy. The dispositive portion of the said Decision reads:[20]

IN VIEW OF ALL THE FOREGOING, the petition is ordered DISMISSED. The Orders dated March 3, 2005 and May 9, 2005 in LR Case No. Q-17376 (03) are affirmed.

Petitioners filed a timely Motion for Reconsideration, which was denied by the CA in its Resolution dated October 20, 2009.[21]

Hence, this petition.

Issues

Petitioners advance the following issues:

- WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT CERTIORARI IS NOT THE PROPER REMEDY OF A PARTY IN A WRIT OF POSSESSION CASE.
- WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THE DENIAL OF PETITIONERS' MOTION TO INTERVENE IS PROPER.
- WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THERE MAY BE ONLY ONE BIDDER IN A FORECLOSURE SALE.

Petitioners allege that the contents of their Omnibus Motion together with the Petition-in-Intervention, although entitled as such, sought the nullification of the February 18, 2003 extrajudicial foreclosure sale and the cancellation of both the certificate of sale and the writ of possession issued in favor of PS Bank.[22] They further submit that the writ of possession is null and void because of patent irregularities in the conduct of the foreclosure sale.[23] In support of their contention, petitioners argue that A.M. No. 99-10-05-0 which took effect on January 15, 2000, requires that there must be at least two participating bidders in an auction sale.[24] Thus:

5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who

conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

Our Ruling

The petition lacks merit.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135. It provides:

Section 1. When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

x x x x

Sec. 4. The sale shall be made at public auction, between the hours of nine in the morning and four in the afternoon; and shall be under the direction of the sheriff of the province, the justice or auxiliary justice of peace of the municipality in which such sale has to be made, or a notary public of said municipality, who shall be entitled to collect a fee of five pesos for each day of actual work performed, in addition to his expenses.

Sec. 5. At any sale, the creditor, trustee, or other person authorized to act for the creditor, may participate in the bidding and purchase under the same conditions as any other bidder, unless the contrary has been expressly provided in the mortgage or trust deed under which the sale is made.

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure,[25] in so far as these are not inconsistent with the provisions of this Act.

The requirement for at least two participating bidders provided in the original version of paragraph 5 of A.M. No. 99-10-05-0 is not found in Act No. 3135. Hence, in the Resolution[26] of the Supreme Court en banc dated January 30, 2001, we made the following pronouncements:

It is contended that this requirement is now found in Act No. 3135 and that it is impractical and burdensome, considering that not all auction sales are commercially attractive to prospective bidders.

The observation is well taken. Neither Act No. 3135 nor the previous circulars issued by the Court governing extrajudicial foreclosures provide for a similar requirement. The two-bidder rule is provided under P.D. No. 1594 and its implementing rules with respect to contracts for government infrastructure projects because of the public interest involved. Although there is a public interest in the regularity of extrajudicial foreclosure of mortgages, the private interest is predominant. The reason, therefore, for the requirement that there must be at least two bidders is not as exigent as in the case of contracts for government infrastructure projects.

On the other hand, the new requirement will necessitate republication of the notice of auction sale in case only one bidder appears at the scheduled auction sale. This is not only costly but, more importantly, it would render naught the binding effect of the publication of the originally scheduled sale. x x x

Thus, as amended by the January 30, 2001 Resolution, paragraph 5 of A.M. No. 99-10-05-0 now reads:

5. The name/s of the bidder/s shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.[27]

Hence, the CA correctly ruled that it is no longer required to have at least two bidders in an extrajudicial foreclosure of mortgage.[28]

Subsequently, on August 7, 2001, we further resolved other matters relating to A.M. No. 99-10-05-0, specifically on: (1) period of redemption of properties with respect to the change introduced by Republic Act No. 8791 (The General Banking Law of 2000) to Act No. 3135; (2) ceiling on sheriff's fees; and (3) payment of filing fees prescribed in the Rules of Court in addition to sheriff's fees.[29]

Pursuant to A.M. No. 99-10-05-0, as amended by the Resolutions of January 30, 2001 and August 7, 2001, the then Court Administrator (now Associate Justice of this Court) Presbitero J. Velasco, Jr., issued Circular No. 7-2002[30] dated January 22, 2002 which became effective on April 22, 2002.[31] Section 5(a) of the said circular states:

Sec. 5. Conduct of the extra-judicial foreclosure sale -

a. The bidding shall be made through sealed bids which must be submitted to the Sheriff who shall conduct the sale between the hours of 9 a.m. and 4 p.m. of the date of the auction (Act 3135, Sec. 4). The property mortgaged shall be awarded to the party submitting the highest bid and in case of a tie, an open bidding shall be conducted between the highest bidders. Payment of the winning bid shall be made either in cash or in managers check, in Philippine currency, within five (5) days from notice.

The use of the word "bids" (in plural form) does not make it a mandatory requirement to have more than one bidder for an auction sale to be valid. A.M. No. 99-10-05-0, as amended, no longer prescribes the requirement of at least two bidders for a valid auction sale. We further held that "Except for errors or omissions in the notice of sale which are calculated to deter or mislead bidders, to depreciate the value of the property, or to prevent it from bringing a fair price, simple mistakes or omissions are not considered fatal to the validity of the notice and the sale made pursuant thereto".[32]

In view of the foregoing, the extra-judicial foreclosure sale conducted in this case is regular and valid. Consequently, the subsequent issuance of the writ of possession is likewise regular and valid.

Hence, it is no longer necessary for this Court to rule on the other issues presented by the petitioners, which are also grounded on the supposed irregularity in the auction.

WHEREFORE, the instant petition is DENIED. The assailed Decision of the Court of Appeals dated May 8, 2009 and its Resolution dated October 20, 2009 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 10-29.

[2] Id. at 31-32.

[3] Id. at 32.

[4] An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed To Real Estate Mortgages, (1924).

[5] Rollo, p. 34.

[6] Id. at 34.

[7] Id. at 80-85; docketed as LRC No. Q-17376 (03).

[8] Id. at 87-88; penned by Judge Lydia Querubin Layosa.

[9] Id. at 89-92.

[10] Id. at 93-102.

[11] Id. at 103-107.

[12] 419 Phil. 215, 235 (2001).

[13] Rollo, p. 104.

[14] Id. at 108-112.

[15] Id. at 113-115; penned by Judge Lydia Querubin Layosa.

[16] Id. at 115.

[17] Id. at 116-121.

[18] Id. at 36.

[19] Id. at 30-44; penned by Associate Justice Teresita Dy-Liacco Flores and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[20] Id. at 43-44.

[21] Id. at 45-46.

[22] Id. at 20.

[23] Id. at 9.

[24] Id. at 21.

[25] RULES OF COURT, now Rule 39, Sections 29, 30 and 34.

[26] A.M. No. 99-10-05-0 dated January 30, 2001, p. 2.

[27] A.M. No. 99-10-05-0 (as further amended, August 7, 2001), p. 4. This Resolution took effect on September 1, 2001.

[28] Rollo, p. 39.

[29] A.M. No. 99-10-05-0 dated August 7, 2001.

[30] Guidelines for the Enforcement of Supreme Court Resolution of December 14, 1999 in Administrative Matter No. 99-10-05-0 (Re: Procedure in Extra-judicial Foreclosure of Mortgage), as amended by the Resolutions dated January 30, 2001 and August 7, 2001.

[31] Section 11 of Circular No. 7-2002.

[32] Supra note 26.

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