SPOUSES VICTOR P. DULNUAN AND JACQUELINE C. DULNUAN, PETITIONERS, VS. METROPOLITAN BANK & TRUST COMPANY, RESPONDENT.

G.R. No. 196864. July 08, 2015

Ponente: PEREZ, J.

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PEREZ, J.:

This is a Petition for Review on Certiorari[1] filed by petitioners Spouses Victor Dulnuan and Jacqueline Dulnuan (Spouses Dulnuan) seeking to reverse and set aside the 14 January 2011 Decision[2] of the Court of Appeals and its 29 April 2011 Resolution[3] in CA-G.R. SP No. 108628. The assailed decision and resolution reversed the 3 December 2008 Order of the Regional Trial Court (RTC) of La Trinidad, Benguet, which, in turn, enjoined the extrajudicial foreclosure sale of a parcel of land covered by Transfer Certificate of Title (TCT) No. T-46390 registered under the name of the Spouses Dulnuan. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the petition is GRANTED. The Order dated December 3, 2008 of the Regional Trial Court, Branch 63 of La Trinidad, Benguet in Civil Case No. 08-CV-2470 which granted [the Spouses Dulnuan's] application for writ of preliminary injunction and the RTC's Order dated March 24, 2009, which denied [Metropolitan Bank and Trust Company's] motion for reconsideration, are hereby REVERSED and SET ASIDE.[4]

The Facts

On several occasions, the Spouses Dulnuan obtained loans from Metropolitan Bank and Trust Company (Metrobank), the total of which reached the sum P3,200,000.00, as evidenced by promissory notes executed by them.[5]

As a security for the loan obligations, the Spouses Dulnuan executed a Real Estate Mortgage (REM) over a parcel of land covered by TCT No. 46390 registered under their names and located at La Trinidad, Benguet with an area of 392 square meters (subject property).[6]

Subsequently, however, the Spouses Dulnuan incurred default and therefore the loan obligations became due and demandable.

On 22 April 2008, Metrobank filed an application for extra-judicial foreclosure proceedings over the subject property before the RTC of La Trinidad, Benguet. After due notice and publication, the mortgaged property was sold at a public auction where Metrobank was declared as the highest bidder after tendering the bid of P6,189,000.00, as shown in the Certificate of Sale.[7]

In order to validly effect the foreclosure, a copy of the said Notice of Public Auction Sale was posted on the bulletin boards of Barangay Betag, Municipal Hall of La Trinidad, Benguet, Provincial Capitol Benguet.[8]

Before the expiration of the one-year redemption period allowed by law, Metrobank filed a Petition for the Issuance of Writ of Possession docketed as LRC Case No. 08-60 which was raffled before Branch 63 of the RTC.[9]

On 30 September 2008, the Spouses Dulnuan instituted a Complaint seeking the issuance of a temporary restraining order and preliminary and final injunction and, for the annulment of extra-judicial foreclosure and real estate mortgage before the RTC of La Trinidad, Benguet, Branch 10, which case was docketed as Civil Case No. 08-CV-2470. The complaint alleged that the mortgage constituted over the property is null and void because at the time the agreement was entered on 18 October 2000, no contract of loan was yet executed by the parties. It was only on 19 December 2003 that they received the proceeds of the loan, as evidenced by the Promissory Note. In other words, there is no principal obligation upon which the ancillary contract of mortgage was attached to.

Upon motion of the Spouses Dulnuan, Civil Case No. 08-CV-2470 was consolidated before Branch 63 of the RTC wherein the LRC Case No. 08-60 was pending. After summary hearing, the court a quo in an Order dated 5 November 2008, issued a Temporary Restraining Order and set the hearing for the issuance of Writ of Preliminary Injunction. Both parties proceeded to adduce evidence for and against the issuance of the writ of preliminary injunction.

Finding an imperative need to protect and preserve the rights of the Spouses Dulnuan during the pendency of the principal action, the RTC issued an Order dated 3 December 2008, enjoining Metrobank from taking possession of the subject property until the final disposition of the annulment of mortgage case. The decretal portion of the Order reads:

> WHEREFORE, premises considered, and finding compelling reason at this point in time to grant for the application for preliminary injunction, the same is hereby granted upon posting of preliminary injunction bond in the amount of P200,000.00 duly approved by the court, let the writ of preliminary injunction be issued to take effect pendente lite, commanding the [Metrobank] including its agents and representatives, as well as persons acting under its control, supervision, instruction, order or authorization, to desist from entering, occupying, possessing, using, or from performing any act of possession and occupation of the aforedescribed property, as well as from causing the cancellation of the existing transfer certificate of title of the [Spouses Dulnuan] and from securing in lieu thereof a transfer certificate of title over the aforedescribed property in its favor.[10]

In an Order dated 24 March 2009, the RTC refused to reconsider its earlier Order.

Arguing that the RTC gravely abused its discretion in enjoining its taking of possession over the subject realties, Metrobank filed a Petition for Certiorari before the Court of Appeals.

On 14 January 2011, the Court of Appeals rendered a Decision reversing the questioned Orders and declared that the issuance of the writ of preliminary injunction is unjustified under the circumstances. The appellate court made a pronouncement that as the highest bidder at the auction sale, Metrobank is entitled to occupy the subject property, and, any question regarding the validity of the mortgage or the foreclosure thereof shall not preclude the purchaser from taking possession. The disquisition the Court of Appeals reads:

> WHEREFORE, the petition is GRANTED. The Order dated December 3, 2008 of the Regional Trial Court, Branch 63 of La Trininidad, Benguet in Civil Case 08-CV-2470 which granted respondents' application for writ of preliminary injunction and the RTC's Order dated March 24, 2009 which denied [Metrobank's] motion for reconsideration are hereby RESERVED and SET ASIDE.[11]

For lack of merit, the Spouses Dulnuan's Motion for Reconsideration was denied by the Court of Appeals in a Resolution dated 29 April 2011.

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The Spouses Dulnuan is now before this Court via this instant Petition for Review on Certiorari seeking the reversal of the Court of Appeals Decision and Resolution on the following grounds:

> I.
>
> THE HONORABLE COURT OF APPEALS COMMITTED GRAVE AND SERIOUS ERROR IN OVERLOOKING THE UNDISPUTED FACT THAT THE PETITION FOR WRIT OF POSSESSION WAS FILED DURING THE REDEMPTION PERIOD AND NO BOND HAD BEEN POSTED BY RESPONDENT TO WARRANT ITS ISSUANCE; AND
>
> II.
>
> THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE AND SERIOUS ERROR IN OVERLOOKING THE FACT THAT CIVIL CASE NO. 08-CV-2470 AND LRC CASE NO. 08-60 WERE CONSOLIDATED.[12]

The Court's Ruling

The Court is urged to resolve the issue of whether or not the Court of Appeals erred in dissolving the writ of preliminary injunction issued against Metrobank. The writ of preliminary injunction enjoined Metrobank from entering, occupying, possessing, using, or performing any act of possession and occupation over the subject property. Without going into the merits of this case, the Court will confine itself in the determination of the propriety of the preliminary injunction, such being a preservative remedy for the protection of substantive rights or interests, is not a cause of action in itself but merely a provisional remedy, an adjunct to a main suit.[13]

A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded.[14] The purpose of injunction is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and educated. Its sole aim is to preserve the status quo until the merits of the case is heard fully.[15]

The status quo is the last actual, peaceable and uncontested situation which precedes a controversy.[16] The status quo should be that existing at the time of the filing of the case. A preliminary injunction should not establish new relations between the parties, but merely maintain or re-establish the pre-existing relationship between them.

Pertinent are the provisions of Section 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance of a writ of preliminary injunction, to wit:

> SEC. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:
>
> (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
>
> (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> (c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable

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right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[17]

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The requisites of a valid injunction are the existence of the right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against the right must be shown.[18]

Extant from the pleadings of the parties is the failure of the Spouses Dulnuan to establish the essential requisites for the issuance of the writ of preliminary injunction.

First. The court a quo cannot enjoin Metrobank, at the instance of the Spouses Dulnuan, from taking possession of the subject property simply because the period of redemption has not yet expired. As the highest bidder in the foreclosure sale upon whom a certificate sale was issued by the sheriff, Metrobank has the right to be placed in possession of the subject property even during the redemption period provided that the necessary amount of bond is posted. As elucidated by the Court in Spouses Tolosa v. United Coconut Planters Bank:[19]

> A writ of possession is simply an order by which the sheriff is commanded by the court to place a person in possession of a real or personal property. Under Section 7 of Act No. 3135, as amended, a writ of possession may be issued in favor of a purchaser in a foreclosure sale 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. Within the one-year redemption period, the purchaser may apply for a writ of possession by filing a petition in the form of an ex parte motion under oath, in the registration or cadastral proceedings of the registered property. The law requires only that the proper motion be filed, the bond approved and no third person is involved. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. In the latter case, the right of possession becomes absolute because the basis thereof is the purchaser's ownership of the property.

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor.[20] The non-expiration of the period of redemption shall not preclude the purchaser from taking possession of the property provided that the necessary is posted. 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[21] of Act No. 3135, as amended. In the case at bar, Metrobank manifested its willingness to post a bond but its application for the issuance of the writ of possession was unjustly denied by the RTC.

Second. The pendency of the action assailing the validity of the mortgage should not bar the issuance of the writ of possession. A pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.[22] Regardless of the pendency of such suit, the purchaser remains entitled to a writ of possession, without prejudice, of course, to the eventual outcome of the pending annulment case. Emphatic to the point is the ruling of the Court in Spouses Fortaleza v. Spouses Lapitan:[23]

> Lastly, we agree with the CA that any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as a justification for opposing the petition for the issuance of the writ of possession. The said issues may be raised and determined only after the issuance of the writ of possession. Indeed, "[t]he judge with whom an application for writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure." The writ issues as a matter of course. "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."

Without prejudice to the final disposition of the annulment case, Metrobank is entitled to the writ of possession and cannot be barred from enjoying the property, possession being one of the essential attributes of ownership.

Third. While the grant or denial of the preliminary injunction rests on the sound discretion of the court taking cognizance of the case, and judicial discretion of the court in injunctive matters should not be interfered with,[24] in the absence of clear and legal right, however, the issuance of a writ of injunction constitutes a grave abuse of discretion.[25]

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.[26] The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of TRO in his favor.[27] When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive writ is improper.[28] Herein, the Spouses Dulnuan failed to show that they have clear and unmistakable right to the issuance of writ in question.

In fine, we find that the Court of Appeals committed no reversible error in reversing the injunction issued by the RTC. The record shows that Metrobank caused the extrajudicial foreclosure of the mortgage on the subject realties as a consequence of the Spouses Dulnuan's default on their mortgage obligation. As the highest bidder at the foreclosure sale, Metrobank can exercise its right of possession over the subject realty, and the issuance of writ of preliminary injunction, enjoining the bank from occupying the property in question, is erroneous.

WHEREFORE, premises considered, the instant petition is hereby DENIED. The assailed Decision dated 14 January 2011 and Resolution dated 29 April 2011 of the Court of Appeals in CA-G.R. SP No. 108628 are hereby AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo De-Castro, Bersamin, and Perlas-Bernabe, JJ., concur.

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[1] Rollo, pp. 9-25.

[2] Id. at 28-41; Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Antonio L. Villamor and Franchito N. Diamante concurring.

[3] Id. at 56.

[4] Id. at 40.

[5] Id. at 86-89.

[6] Id. at 90-93.

[7] Id. at 94-96.

[8] Id. at 95.

[9] Id. at 97-104.

[10] Id. at 120.

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[11] Id. at 40.

[12] Id. at 11.

[13] Pahila-Garrido v. Tortogo, G.R. 156358, 17 August 2011, 655 SCRA 553, 575.

[14] Australian Professional Realty, Inc. v. Municipality of Padre Garcia Batangas Province, G. R. No. 183367, 14 March 2012, 668 SCRA 253, 260-261.

[15] Bank of the Philippine Islands v. Spouses Santiago, 548 Phil. 314, 329 (2007).

[16] Rualo v. Pitargue, 490 Phil. 28, 47 (2005).

[17] Australian Professional Realty, Inc. v. Municipality of Padre Garcia Batangas Province, supra note 14 at 261.

[18] TML Gasquet Industries, Inc. v. BPI family Savings Bank, Inc., G.R. No, 188768, 7 January 2013, 688 SCRA 50, 58.

[19] G.R. No. 183058, 3 April 2013, 695 SCRA 138, 145-146.

[20] Spouses Marquez v. Spouses Alindog, G.R. No. 184045, 22 January 2014, 714 SCRA 460, 468.

[21] Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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.

[22] Spouses Tolosa v. United Coconut Planters Bank, supra note 19 at 148-149.

[23] G.R. No. 178288, 15 August 2012, 678 SCRA 469, 484.

[24] Australian Professional Realty v. Municipality of Padre Garcia, Batangas Province, supra note 14 at 261-262.

[25] TML Gasquet Industries v. BPI Family Savings Bank, supra note 18 at 60.

[26] Australian Professional Realty v. Municipality of Padre Garcia, Batangas Province, supra note 14 at 262.

[27] Id.

[28] The Incorporators of Mindanao Institute v. The United Church of Christ in the Philippines, G.R. No. 171765, 21 March 2012, 668 SCRA 637, 649.

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