

NORMA I. BARING, PETITIONER, VS. ELENA LOAN AND CREDIT COMPANY, INC., RESPONDENT.

G.R. No. 224225. August 14, 2017

Ponente: PERALTA, J.

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PERALTA, J.:

Assailed in this petition for review on certiorari are the Decision[1] dated September 18, 2015 and the Resolution[2] dated March 22, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 95956.

The antecedent facts, as found by the Court of Appeals, are as follows:

Herein defendants-appellants Norma Baring (now petitioner Baring), Esmeraldo Hernaez (Hernaez) and the Spouses Virgilio and Rosario Bernardino (Spouses Bernardino) obtained a series of loans and other credit accommodations in the initial amount of three hundred thousand pesos (P300,000.00) from herein petitioner-appellee Elena Loan and Credit Company, Inc. (herein respondent Elena Loan), a duly organized lending investor. As a security for the said loan, Baring executed a Deed of Real Estate Mortgage over a parcel of land, with improvements, located at Blk 4, Lot 20, Adelfa Street, San Antonio Valley 17, Talon, Las Piñas City (subject property). The subject property was covered by Transfer Certificate of Title No. T-95109 (TCT No. T-95109) of the Register of Deeds of Las Piñas City and was registered in the name of Baring. In the Real Estate Mortgage, the parties agreed that Elena Loan, as the mortgagee, may foreclose the mortgage extrajudicially in accordance with Act No. 3135 should Baring, the mortgagor, default in the payment of her obligation. The Real Estate Mortgage was duly registered with the Register of Deeds on March 4, 2005.

Subsequently, the debtors failed to pay their obligations under the promissory notes despite repeated demands. As of August 6, 2007, their outstanding obligation had ballooned to six hundred ninety-eight thousand forty pesos and seventy-one centavos (P698,040.71), inclusive of interest, penalties and charges.

Consequently, on August 28, 2007, Elena Loan filed a Petition for Foreclosure under Act No. 3135, as amended, before the Office of the Clerk of Court and Ex-Officio Sheriff of Las Piñas City. Acting on the application, the Ex-Officio Sheriff issued a Notice of Extrajudicial Sale on September 5, 2007, scheduling the public auction on October 9, 2007 at 10:00 o'clock in the morning. Thereafter, Elena Loan complied with all the formalities prescribed by law, such as the posting of the required Notice of Extrajudicial Sale and the publication thereof in a newspaper of general circulation. Later on, Elena Loan participated in the public auction and emerged as the highest bidder. Shortly thereafter, a Certificate of Sale was issued in favor of Elena Loan on November 14, 2007. The Certificate of Sale was registered in the Office of the Register of Deeds of Las Piñas City and was inscribed on TCT No. T-95109 on November 27, 2007 as Entry No. 8204-29.

Eventually, the period of redemption expired without Baring exercising her right of redemption. Thus, on November 28, 2008, Elena Loan filed an Affidavit of Consolidation of Ownership. Thereafter, TCT No. T-95109 was canceled and in lieu thereof, Transfer Certificate of Title No. T-117238 (TCT No. 117238) was issued in the name of Elena Loan on April 24, 2009 by the Register of Deeds of Las Piñas City. Accordingly, as the new owner of the subject property, Elena Loan sent a demand letter to Baring and Hernaez on September 16, 2009 requesting them to vacate the subject property. However, the demand remained unheeded.

Meanwhile on December 4, 2009, Elena Loan filed an Ex-Parte Petition for the Issuance of a Writ of Possession. In its Petition, Elena Loan prayed for the issuance of a writ of possession directing the sheriff to eject the mortgagor Baring and place it in complete possession of the subject property, free from any adverse occupants. The Petition was docketed as LRC Case No. L.P. 09-0116 and raffled to Branch 201 presided over by Judge Navarro-Domingo.[3]

On April 20, 2010, the Regional Trial Court (RTC) rendered a Decision,[4] the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is hereby GRANTED. As prayed for, let a writ of possession be issued addressed to the Clerk of Court of the Regional Trial Court of Las Piñas City as Ex-Officio Sheriff or her duly authorized representative for her to place petitioner Elena Loan and Credit Company, Inc. in possession of the parcel of land covered by Transfer Certificate of Title No. T-11723 8 of the Register of Deeds of Las Piñas City formerly Transfer Certificate of Title No. T-95109 of the Register of Deeds of Las Piñas City.

SO ORDERED.[5]

Petitioner filed an appeal with the CA which in a Decision dated September 18, 2015 denied petitioner's appeal for lack of merit and affirmed the RTC decision in toto.

Petitioner filed a Manifestation with motion for reconsideration where she claimed that respondent is not authorized by the Securities and Exchange Commission (SEC) to act as a lending company and, accordingly, it is devoid of any authority and personality to file the petition for foreclosure of the real estate mortgage and to request for the issuance of an ex-parte writ of possession in its favor.

On March 22, 2016, the CA issued a Resolution denying the motion for reconsideration saying that the question laid by petitioner regarding the legal personality and authority of respondent to file the petition for issuance of a writ of possession is clearly misplaced and cannot work to defeat the latter's right to the issuance of the writ of possession as the absolute owner of the subject property.

Hence, this petition for review filed by petitioner raising the following issues:

THE COURT OF APPEALS ERRED IN DENYING THE MOTION FOR RECONSIDERATION OF THEIR DECISION UPHOLDING THE DECISION OF THE LOWER COURT.

I.

AUTHORITY AND CAPACITY;

ELENA LOAN IS NOT AUTHORIZED TO CONDUCT ITS BUSINESS AS A LENDING COMPANY UNDER REPUBLIC ACT NO. 9474;

THEY CANNOT PURSUE THEIR OBJECTIVE AS A LENDING COMPANY IF THERE IS NO AUTHORIZATION FROM THE SECURITIES AND EXCHANGE COMMISSION.[6]

II

EXORBITANT AND USURIOUS INTEREST RATES;

3.75% MONTHLY INTEREST RATE IS CONTRA BONUS MORES, IT IS UNCONSCIONABLE, INIQUITOUS AND EXORBITANT.[7]

Petitioner reiterates her contention that per the Certification issued by the SEC, respondent has not been issued a secondary franchise to operate as a lending company pursuant to Republic Act (RA) No. 9474, otherwise known as the Lending Company Regulation Act of 2007; that at the time the petition for foreclosure was filed on August 28, 2007, as well as the extrajudicial foreclosure of property, the public auction and the ex-parte petition for the

issuance of a writ of possession on December 4, 2009, respondent had not been granted any authorization by the SEC to operate and conduct business as a lending company; and, that it cannot be a party to a civil action, therefore, it is not entitled to the issuance of a writ of possession. Petitioner also assails the interest rates charged on her loans for being unconscionable, exorbitant, excessive and contrary to morals which made it impossible for her to extinguish and pay those loans.

We find no merit in the petition.

The CA correctly affirmed the RTC's issuance of the writ of possession over the subject property.

Section 7 of Act No. 3135, as amended by Act 4118,[8] governs the issuance of a writ of possession in cases of extrajudicial foreclosure sales of real estate mortgage, to wit:

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 xxx 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.

Hence, a writ of possession may be issued in favor of a purchaser in a foreclosure sale of a real estate mortgage 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.[9] 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.[10] 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.[11] 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.[12]

In this case, respondent foreclosed the subject property after petitioner and her co-debtors failed to pay their obligation under the promissory notes despite repeated demands. Upon compliance with the legal requirements, a public auction was held where respondent emerged as the highest bidder. A certificate of sale was issued in respondent's favor and was registered with the Office of the Register of Deeds of Las Piñas City on November 27, 2007. As petitioner did not exercise her right of redemption over the foreclosed property, the title to the property was consolidated in the name of respondent as evidenced by TCT No. 117238. Consequently, as the new registered owner of the subject property, respondent is entitled to exercise all the attributes of ownership as provided in Article 428.[13] Thus, in *Gallent, Sr. v. Velasquez*,[14] we said:

It is well-settled that the purchaser in an extrajudicial foreclosure of real property becomes the absolute owner of the property if no redemption is made within one year from the registration of the certificate of sale by those entitled to redeem. As absolute owner, he is entitled to all the rights of ownership over a property recognized in

Article 428 of the New Civil Code, not least of which is possession, or *jus possidendi*.

A torrens title recognizes the owner whose name appears in the certificate as entitled to all the rights of ownership under the civil law. The Civil Code of the Philippines defines ownership in Articles 427, 428 and 429. This concept is based on Roman Law which the Spaniards introduced to the Philippines through the Civil Code of 1889. Ownership, under Roman Law, may be exercised over things or rights. It primarily includes the right of the owner to enjoy and dispose of the thing owned. And the right to enjoy and dispose of the thing includes the right to receive from the thing what it produces, [*jus utendi; jus fruendi*] the right to consume the thing by its use, [*jus abutendi*] the right to alienate, encumber, transform or even destroy the thing owned, [*jus disponendi*] and the right to exclude from the possession of the thing owned by any other person to whom the owner has not transmitted such thing [*jus vindicandi*].

Since respondent is the absolute and registered owner of the subject property, and entitled to the possession thereof, the CA correctly ruled that it was the RTC's ministerial duty to issue the writ of possession prayed for by the respondent. The issuance of the writ of possession becomes a ministerial function upon the proper application and proof of title.

In *Spouses Espiridion v. Court of Appeals*,^[15] We held:

xxx The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court has no discretion on this matter. Hence, any talk of discretion in connection with such issuance is misplaced.

A clear line demarcates a discretionary act from a ministerial one. Thus:

The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.^[16]

Petitioner's assertion that respondent has not been granted any authority to operate as a lending company, as well as the allegations of unconscionable and exorbitant interest rates imposed on her loans, cannot be raised as a legal basis to prevent the issuance of the writ of possession. We have held that given the ministerial nature of the RTC's duty to issue the writ of possession after the purchaser has consolidated its ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ.^[17] A pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession.^[18]

In *Bank of the Philippine Islands v. Spouses Tarampi*,^[19] we ruled:

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

xxxx

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.

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. 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.[20]

WHEREFORE, the petition is DENIED. The Decision dated September 18, 2015 and the Resolution dated March 22, 2016 of the Court of Appeals in CA-G.R. CV No. 95956 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[1] Penned by Associate Justice Ramon Paul L. Hernando, with Associate Justices Stephen C. Cruz and Rodil V. Zalameda, concurring; rollo, pp. 20-30.

[2] Id. at 31-33.

[3] Id. at 20-22.

[4] Penned by Judge Lorna Navarro Domingo.

[5] Id. at 22-23.

[6] Id. at 6.

[7] Id. at 12.

[8] Entitled An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five, Entitled "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages." (Approved December 7, 1933).

[9] LZK Holdings and Development Corporation v. Planters Development Bank, 550 Phil 825, 832 (2007).

[10] Sagarbarria v. Philippine Business Bank, 611 Phil. 269, 276-277 (2009), citing Spouses Saguan v. Philippine Bank of Communications, 563 Phil. 696, 706 (2007).

[11] Id.

[12] Id. at 707.

[13] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

[14] G.R. No. 203949 and G.R. No. 205071, April 6, 2016, 788 SCRA 518, 529-530, citing Laureano v. Bormaheco, Inc., 404 Phil. 80, 86 (2001). (Citations omitted)

[15] 523 Phil. 664 (2006).

[16] Spouses Espiridion v. Court of Appeals, supra, at 667-668. (Citations omitted)

[17] Spouses Tolosa v. UCPB, 708 Phil. 134, 144 (2013), citing Spouses Fortaleza v. Spouses Lapitan, 692 Phil. 596, 613 (2012).

[18] Id., citing Spouses Samson v. Judge Rivera, 472 Phil. 836, 849 (2004).

[19] 594 Phil. 198 (2008).

[20] Bank of the Philippine Islands v. Spouses Tarampi, supra, at 205-206. (Citations omitted)

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