

**BLOSSOM & CO., PETITIONER, VS. MANILA GAS CORPORATION,
RICARDO SUMMERS, SHERIFF OF THE CITY OF MANILA, AND
GEORGE R. HARVEY, JUDGE OF FIRST INSTANCE OF MANILA,
RESPONDENTS.**

G.R. No. 23700. March 18, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

Though the petition in this case is styled a "Petition for preliminary injunction," it is in reality a petition for a writ of prohibition. The petitioner alleges, among many other things, more or less immaterial, that on or about October 16, 1923, in the City of Manila, in civil case No. 24267, wherein one of the herein respondents, the Manila Gas Corporation was plaintiff and the herein petitioner Blossom & Co. was the defendant, a judgment in mortgage foreclosure proceedings was rendered against the said Blossom & Co. ordering the payment of P7,794.65 to the said Manila Gas Corporation, with interest thereon at the rate of 8 per cent per annum, the judgment also providing that if the defendant Blossom & Co. failed to satisfy the judgment within ninety days from the time of the notification of said judgment, the mortgaged land should be sold by the sheriff at public auction and the proceeds of the sale applied towards the satisfaction of said judgment; that from said judgment Blossom & Co. appealed to this court and on October 18, 1924, the judgment of the Court of First Instance was affirmed;[1] that the decision of this court became final on the 28th of the same month and the record was returned to the court below.

It is further alleged that on December 31, 1924, the respondent, the Honorable George R. Harvey, Judge of the Court of First Instance of the City of Manila, ordered that a writ of execution be issued against the defendant in said case No. 24267; that on January 6, 1925, the same respondent modified his order of December 31, 1924, by ordering "that the judgment be executed; " that on or about January 9, 1925, the respondent Ricardo Summers, in his capacity as sheriff of the City of Manila and in compliance with the aforesaid orders, advertised in the newspapers of the City of Manila that the mortgaged property would be sold at public auction to the highest bidder in front of the court house in Manila, at 9 o'clock a. m. on February 6, 1925.

The petitioner further alleges that the execution of the judgment is premature inasmuch as the period of three months from the date of the judgment provided for in section 256 of the Code of Civil Procedure for the execution of a judgment in foreclosure proceedings had not then expired; that the interests of the petitioner will suffer grave injury from the premature execution of the judgment; and that the petitioner has no other plain, speedy, and adequate remedy in the ordinary course of law than to apply to this court for an order enjoining the respondents from proceeding with the aforesaid sale.

Upon being required to answer the petition within five days, the respondents in lieu of an answer filed a demurrer which will be considered as an answer admitting the material allegations of the petition. The case was thereupon set down for hearing on February 17, 1925, at which hearing the parties were represented by counsel and

arguments submitted.

The only question presented for our consideration is whether, in the event a judgment for the plaintiff in a foreclosure proceeding is affirmed on appeal, the three months stay of execution allowed the defendant by section 256 of the Code of Civil Procedure is to be counted from the date of the judgment of the lower court or whether it should be counted from the date of the final determination of the case by the appellate court.

The respondents maintain that under the second paragraph of section 506 of the Code of Civil Procedure the judgment must, in regard to its execution, be treated as if no appeal had been taken and that three months from the date of the original judgment having expired it might be executed immediately upon the remittitur. We cannot accept this view and do not think that the paragraph of the Code upon which the respondents rely supports their contention. The section in which it is found reads as follows:

"Certificate of judgment to be remitted the Court of First Instance.—In all cases heard by the Supreme Court on bills of exception, its judgments shall be remitted to the Courts of First Instance from which the actions respectively came into the Supreme Court; and for this purpose it shall be the duty of the clerk of the Supreme Court, within ten days after the close of any term, to remit to the clerks of Courts of First Instance, notices of all judgments of the Supreme Court in actions brought from the Courts of First Instance respectively. Upon receiving the notice so remitted, the clerk of the Court of First Instance shall enter the same upon his docket and file the notice with the other papers in the action.

"The judgment so remitted shall be executed by the Court of First Instance, in the same manner as though the action had not been carried to the Supreme Court. But the Supreme Court may, by special order, direct any particular judgment to be remitted to the proper Court of First Instance at any time, without awaiting the end of the term.

"It shall likewise be the duty of the clerk of the Supreme Court, within ten days after the close of any term, to remit to the clerks of the Courts of First Instance, with the notices of all judgments of the Supreme Court in this section referred to, likewise all the original documents and the record of the actions transmitted by the clerk of the Court of First Instance, to the clerk of the Court of First Instance, in order that the files of the action may remain together in that court."

As will be seen, the paragraph in question relates to the manner of executing the judgment and says nothing about the time. As to the time for the execution, section 144 of the Code of Civil Procedure provides that, except by special order of the court, no execution shall issue upon a final judgment until after the period for perfecting, a bill of exceptions has expired and that the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed. In other words, the filing of the bill tolls the running of time pending the final disposition on appeal and we can see no valid reason why this should not apply to the three months period allowed the judgment debtor by section 256 to satisfy the judgment before execution issues.

That such is the intent of the statute seems fairly clear. The defendant in a foreclosure proceeding has no right of redemption from the judicial sale of the mortgaged property and the purpose of the three months stay of execution is very evidently to give the judgment debtor time and opportunity to make the necessary arrangements for the payment of the debt after it has been definitely determined that the debt is due and must be paid by him. In the event of an appeal there is no definite determination of the case until it is finally disposed of by the appellate court and if we were to hold that the appeal did not suspend the running of the period mentioned, the result would necessarily be that the defendant would be deprived of the time granted him by the statute to provide funds for the satisfaction of the judgment before its execution. We therefore hold that the running of said period is suspended during the appeal and as the case cannot be said to be finally determined on appeal while the record remains with

the appellate court, it logically follows that the period does not begin to run until the remittitur of the record to the court below. In the present case, it is alleged in the petition and admitted by the respondents that the decision of this court in the foreclosure proceedings became final on October 28, 1924, and that the sheriff initiated the execution of the judgment on January 9, 1925, only seventy-three days after it became final.

It appearing that the execution here in question was begun before the expiration of three months from the final determination of the case, the petition is granted and the respondents are prohibited from proceeding with the execution until after the expiration of the period of three months from October 28, 1924. The respondent, the Manila Gas Corporation, shall pay the costs. So ordered.

Johnson, Malcolm, Villamor, and Romualdez, JJ., concur.

[1] Manila Gas Corporation vs. Blossom & Co., R. G. No. 22109, not reported.

SPECIALLY CONCURRING

JOHNS, J.:

This case is presented on a demurrer to the petition, which in legal effect admits all of the material allegations in the petition. Hence, as the majority opinion says:

"The only question presented for our consideration is whether, in the event a judgment for the plaintiff in a foreclosure proceeding is affirmed on appeal, the three months stay of execution allowed the defendant by section 256 of the Code of Civil Procedure is to be counted from the date of the judgment of the lower court or whether it should be counted from the date of the final determination of the case by the appellate court."

Based on such admissions, I agree with the majority opinion.

As it points out, among other things, section 506 of the Code of Civil Procedure says:

"The judgment so remitted shall be executed by the Court of First Instance, in the same manner as though the action had not been carried to the Supreme Court."

If it be a fact that an appeal is dismissed or that no final judgment is rendered by this court, and that the judgment of the lower court remains in legal force and effect as of the day when it was rendered, and that an execution is issued upon the original judgment as it was rendered in the lower court, another and a different question would be presented. But for the reasons above stated, I concur in the result.

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