

CONSOLACION P. CHAVEZ, CONNIE P. CHAVEZ, CARLA HORTENSIA C. ADELANTAR, CARMELA P. CHAVEZ, CRESENTE P. CHAVEZ, JR., AND CECILIA C. GIBE, HEREIN REPRESENTED BY HER ATTORNEY-IN-FAC...

G.R. No. 242852. July 29, 2019

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition[1] for review on certiorari are the Decision[2] dated February 20, 2018 and the Resolution[3] dated October 10, 2018 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 10333, which: (a) set aside the Order[4] dated May 26, 2016 of the Regional Trial Court of Jordan, Guimaras, Branch 65 (RTC) and (b) directed it to issue a Writ of Possession in favor of respondent Maybank Philippines, Inc. (respondent).

The Facts

In December 1999, petitioner Consolacion Chavez (Consolacion) and her late husband, Cresente Chavez, Sr.[5] (Crescente, Sr.; collectively, Spouses Chavez) obtained a loan from respondent for the construction of a commercial building.[6] As collateral therefor, they mortgaged the land on which the building was to be erected, particularly described as Lot No. 1583-C-2-E-1 covered by Transfer Certificate of Title (TCT) No. T-177235[7] (subject property) of the Registry of Deeds for the Province of Iloilo (RD-Iloilo).[8]

Unfortunately, Spouses Chavez defaulted in the payment of their loan, prompting respondent to extrajudicially foreclose the mortgage on the subject property.[9] Respondent emerged as the highest bidder at the public auction and was thereafter issued a Certificate of Sale at Public Auction[10] dated December 18, 2002, which was registered with the RD-Iloilo subject to Spouses Chavez's right of redemption.[11]

Meanwhile, Spouses Chavez filed an action for the nullification of the extrajudicial foreclosure proceedings before the RTC, docketed as Civil Case No. 0236.[12] During its pendency, Cresente, Sr. died and was substituted by his children Connie P. Chavez, Carla Hortensia C. Adelantar, Carmela P. Chavez, Cresente P. Chavez, Jr., and Cecilia P. Gibe, represented by her attorney-in-fact, Carla P. Chavez.[13] Thus, they were joined as plaintiffs together with their mother, Consolacion (collectively, petitioners).[14]

During the pre-trial stage of Civil Case No. 0236, the parties entered into a Compromise Agreement[15] dated December 13, 2012 by virtue of which respondent allowed petitioners to buy back the subject property for the consideration of forty million pesos (P40,000,000.00) payable in installments, notwithstanding the expiration of the redemption period.[16] Pertinent portions of the Compromise Agreement state:

(1)

Notwithstanding the expiration of the redemption period allowed by law, Maybank, nevertheless allows the CHAVEZ FAMILY to buy back the property covered by Transfer Certificate of Title No. 177235 subject to the terms and conditions herein set forth;

(2)

The consideration of the buyback (the buyback price) shall be as it is hereby agreed upon to be FORTY MILLION PESOS (P40,000,000.00), payable in the following manner;

x x x x

(3)

Upon execution of this Compromise Agreement, provided that the corresponding corporate approvals and authorization on the part of Maybank have been obtained, the plaintiff [herein petitioners] agrees and undertakes to jointly submit the same to the Court for approval, praying for the dismissal with prejudice of Civil Case No. 0236, for Nullification of the Foreclosure Proceedings and Documents, entitled Sps. Cresente & Consolacion Chavez -versus- MPI, Guimaras, Register of Deeds, Iloilo Province, RTC Branch 65, San Miguel, Jordan, Guimaras Province, together with all the parties' claims and counterclaims against each other;

The former owner and children/plaintiffs shall assume the cancellation of the annotation of Notice of Lis Pendens on the TCT under Entry No. 17030 and its attendant costs.

The Compromise Agreement shall be final and executory and that no other case of the same nature shall be filed or any petition or injunction filed, arising from the same issues and by the same parties;

(4)

This buy back transaction shall on an "as-is, where-is" basis. As such, the CHAVEZ FAMILY shall be responsible, among others, as follows:

x x x x

(5)

It is hereby agreed and understood that failure of the CHAVEZ FAMILY to pay any one (1) of the quarterly amortization referred to in paragraph 2 when due and to otherwise perform strictly with any of their obligations herein provided, shall mean a breach of this agreement and shall constitute default and the same shall render the whole obligation due and demandable; Provided that all unpaid and defaulted obligation shall be subject to a penalty at the rate of 24% per annum from the date the defaulted became due and demandable until fully paid. Said breach shall also entitle Maybank at its sole and singular option to right away secure an order for the immediate possession of the subject property from RTC San Miguel Jordan, Branch 65, in Civil Case No. 0236 of the above entitled case and that the CHAVEZ FAMILY shall agree that the court may issue a JUDICIAL CONFIRMATION of the said action of Maybank.

(6)

Anything in this Agreement to the contrary notwithstanding, Maybank reserves the right to cancel this Agreement in the event of default by the Chavez Family in the performance of any of their obligations herein stipulated. In such case, all payments made by them shall be considered as rentals for the occupancy of and/or used of the subject property and as liquidated and ascertained damages.[17]

In view of the execution of the Compromise Agreement, the RTC dismissed Civil Case No. 0236 in an Order[18] dated May 30, 2016.

Unfortunately, petitioners defaulted in the payment of their obligation under the Compromise Agreement.[19] This prompted respondent to enter into a Deed of Promise to Sell[20] with J.E. TICO Realty Corporation (J.E. TICO Realty) and to file a Petition[21] for Issuance of a Writ of Possession before the RTC, docketed as Cadastral Case No. 15-0608. Respondent prayed that it be placed in possession of the subject property, being the

highest bidder in the foreclosure sale and as owner thereof.[22]

Petitioners opposed[23] the petition, arguing that the Compromise Agreement was a contract of sale which transferred to them the ownership of the subject property.[24] Therefore, possession thereof cannot be summarily awarded to respondent, considering that their interest is adverse to that of a mortgagor-debtor.[25] Additionally, they filed an action to annul respondent's Deed of Promise to Sell executed with J.E. TICO Realty, docketed as Civil Case No. 15-0527.[26]

The RTC Ruling

In an Order[27] dated May 26, 2016, the RTC declined to issue a Writ of Possession in respondent's favor, finding that it was first necessary to determine the nature of the interest of petitioners over the subject property, i. e., whether it is adverse to that of a mortgagor-debtor.[28] Likewise, the RTC deemed it necessary to first look into the nature of the Compromise Agreement, i.e., whether it was a deed of sale or some other contract.[29] The resolution of these issues therefore requires the reception of evidence. Additionally, the RTC ordered the consolidation of Cadastral Case No. 15-0608 and Civil Case No. 15-0527, opining that the core issues and the parties involved in both cases are the same.[30]

Respondent moved for reconsideration,[31] which was denied in an Order[32] dated July 12, 2016. Aggrieved, respondent filed a petition for certiorari[33] before the CA.

The CA Ruling

In a Decision[34] dated February 20, 2018, the CA set aside the assailed issuances of the RTC and accordingly, directed it to issue a Writ of Possession in favor of respondent in Cadastral Case No. 15-0608.[35] The CA held that the RTC gravely abused its discretion in not issuing an ex-parte Writ of Possession, the same being the court's ministerial function pursuant to Sections 6[36] and 7[37] of Act No. 3135,[38] as amended by Act No. 4118.[39] It further held that while the rules admit of an exception which bars the issuance of a writ of possession, such as when the subject land is held by a third party adversely to the mortgagor-debtor,[40] such a situation does not obtain in this case. Consolacion, one of the original mortgagors, cannot claim to have possessed the subject property adverse to herself, while the children of the other mortgagor, Cresente, Sr., merely substituted him in these proceedings. Further, the CA held that the parties did not intend to extinguish their mortgagor-mortgagee relationship, as extant in paragraph 5[41] of the Compromise Agreement where respondent reserved its right to immediately possess the subject property should petitioners default in any of their payments.

Moreover, the CA held that the consolidation of Cadastral Case No. 15-0608 and Civil Case No. 15-0527 was improper, considering that the former is a non-litigious proceeding which involves the ministerial function of issuing an ex-parte writ of possession in favor of respondent,[42] while the latter involves the annulment of respondent's Deed of Promise to Sell in favor of J.E. TICO Realty which is litigious in nature.

Petitioners moved for reconsideration,[43] which was denied in a Resolution[44] dated October 10, 2018; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in directing the issuance of an ex-parte Writ of Possession in favor of respondent.

The Court's Ruling

In their petition, petitioners maintain,[45] among others, that respondent can no longer demand immediate possession of the subject property through an ex-parte motion for the issuance of a writ of possession, in light of

the execution of the Compromise Agreement which, they aver, constitutes a "new contract" and a "new legal relationship" between the parties on the thesis that the nature of the transaction embraced therein involves a sale of the subject property. Respondent refutes[46] petitioners' stance, insisting that the Compromise Agreement was simply what it is – a compromise entered between the parties designed to put an end to litigation, non-compliance therewith being a ground to rescind the compromise. Moreover, the mortgagor-mortgagee regime between the parties was never extinguished, as respondent never transferred ownership of the subject property to petitioners upon the execution of the Compromise Agreement.[47]

The petition lacks merit.

The nature of the Compromise Agreement

Article 2028[48] of the Civil Code defines a "compromise agreement" as a contract whereby the parties make reciprocal concessions in order to avoid litigation or put an end to one already commenced. If judicially approved, it becomes more than a binding contract; it is a determination of a controversy and has the force and effect of a judgment.[49] To have the force of law between the parties, a compromise agreement must comply with the requisites and principles of contracts. Thus, it must have the following elements: (1) the consent of the parties to the compromise; (2) an object certain that is the subject matter of the compromise; and (3) the cause of the obligation that is established. While compromise agreements are generally favored and encouraged by the courts, it must be proved that they were voluntarily, freely, and intelligently entered into by the parties, who had full knowledge of the judgment.[50] Hence, a compromise agreement, once approved, has the effect of *res judicata* between the parties and should not be disturbed except for vices of consent, forgery, fraud, misrepresentation, and coercion.[51]

In this case, it is undisputed that after the extrajudicial foreclosure of the subject property and the consolidation of title in the name of respondent, and during the pendency of Civil Case No. 0236[52] for nullification of the extrajudicial foreclosure proceedings filed by petitioners against respondent, the parties entered into a Compromise Agreement whereby petitioners were given the opportunity to "buy back" the subject property despite the lapse of the one-year period for redemption. Unfortunately, petitioners defaulted in their obligations under the Compromise Agreement — an allegation that, the Court notes, petitioners never denied. Further, as the CA correctly pointed out,[53] the terms and conditions of the Compromise Agreement are legally binding upon the parties having been executed without any vice of consent, forgery, fraud, misrepresentation, or coercion.

The stipulations of the Compromise Agreement, particularly paragraphs (5) and (6) thereof, clearly show the right of respondent to rescind the same and to immediately secure a writ of possession over the subject property. This course of action/option on the part of respondent finds support under Article 2041[54] of the Civil Code, which recognizes the right of an aggrieved party to either (1) enforce the compromise by a writ of execution or (2) regard it as rescinded and insist upon his original demand, upon the other party's failure or refusal to abide by the compromise.[55]

Indeed, the Court has acknowledged the option to rescind a compromise agreement due to non-compliance with its terms,[56] as explained in *Chavez v. Court of Appeals*:^[57]

However, in *Heirs of Zari, et al. v. Santos*, we clarified that the broad precept enunciated in Art. 2037 is qualified by Art. 2041 of the same Code, which provides:

If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

We explained, viz.:

[B]efore the onset of the new Civil Code, there was no right to rescind compromise agreements. Where a party violated the terms of a compromise agreement, the only recourse open to the other party was to enforce the terms thereof.

When the new Civil Code came into being, its Article 2041 x x x created for the first time the right of rescission. That provision gives to the aggrieved party the right to "either enforce the compromise or regard it as rescinded and insist upon his original demand." Article 2041 should obviously be deemed to qualify the broad precept enunciated in Article 2037 that "[a] compromise has upon the parties the effect and authority of res judicata.

In exercising the second option under Art. 2041, the aggrieved party may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission. This is because he may regard the compromise as already rescinded by the breach thereof of the other party.[58]

In this regard, the Court must reject petitioners' stance that the "buy back" transaction embraced in the Compromise Agreement was in the nature of a sale and that upon the execution thereof, the parties were deemed to have entered into a new legal relation, citing the doctrine enunciated in the case of *Philippine National Bank v. Spouses Pimentel*[59] (PNB case) to bolster their argument. It bears pointing out, however, that in the PNB case, the parties clearly and unequivocally executed a Deed of Conditional Sale whereby respondents repurchased the subject property from PNB for Seven Million Five Hundred Thousand Pesos (P7,500,000.00). Thus, the Court ruled therein that "when PNB executed the deed of conditional sale in favor of herein respondents, the transaction is no longer a sale under the provisions of Act No. 3135." [60]

The writ of possession must issue as
a matter of course

The law[61] and jurisprudence are clear that in extrajudicial foreclosure proceedings, an order for a writ of possession issues as a matter of course, upon proper motion, after the expiration of the redemption period without the mortgagor exercising the right of redemption, or even during the redemption period, provided a bond is posted to indemnify the debtor in case the foreclosure sale is shown to have been conducted without complying with the requirements of the law or without the debtor violating the mortgage contract. The rationale for the ministerial issuance of a writ of possession is to put the foreclosure buyer in possession of the property sold without delay, since the right to possession is founded on ownership of the property.[62]

Once the title to the property has been consolidated in the buyer's name upon failure of the mortgagor to redeem the property within the one-year redemption period, the writ of possession becomes a matter of right belonging to the buyer. Consequently, the buyer can demand possession of the property at any time. Its right to possession has then ripened into the right of a confirmed absolute owner and the issuance of the writ becomes a ministerial function that does not admit of the exercise of the court's discretion.[63] The basis of the right to possession is the purchaser's ownership of the property.[64]

Jurisprudence recognizes certain exceptions to the court's ministerial function to issue a writ of possession. In *Nagtalon v. UCPB*, [65] the Court enumerated the following jurisprudential exceptions: (a) gross inadequacy of the purchase price; [66] (b) third party claiming right adverse to the mortgagor/debtor, [67] and; (c) failure to pay the surplus proceeds of the sale to the mortgagor. [68] None of the foregoing instances obtain in the present case; as the CA aptly observed, [69] petitioners cannot be said to be holding the subject property adverse to themselves, being one of the original mortgagors in the case of *Consolacion* and the heirs and/or substitute parties in the case of petitioners. Accordingly, the writ of possession must issue as a matter of course in respondent's favor.

WHEREFORE, the petition is DENIED. The Decision dated February 20, 2018 and the Resolution dated October 10, 2018 of the Court of Appeals in CA-G.R. CEB-SP No. 10333 are hereby AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Caguioa, J. Reyes, Jr., and Lazaro-Javier, JJ., concur.

[*]Also referred to as "Carla Hortensia C. Adelantar" in some parts of the records.

[1] Rollo, pp. 33-57.

[2] Id. at 11-23. Penned by Associate Justice Louis P. Acosta with Associate Justices Edward B. Contreras and Geraldine C. Fiel-Macaraig, concurring.

[3] Id. at 26-27. Penned by Associate Justice Louis P. Acosta with Associate Justices Edward B. Contreras and Emily R. Aliño-Geluz, concurring.

[4] CA rollo, pp. 39-41. Penned by Presiding Judge Rosario Abigail M. Dris-Villanueva.

[5] Also referred to as "Crescente Chavez, Sr." in some parts of the records.

[6] Rollo, p. 12.

[7] CA rollo, pp. 53-55.

[8] Rollo, p. 12.

[9] Id.

[10] CA rollo, pp. 56-57.

[11] Id. at 39. See also rollo, p. 12.

[12] CA rollo, p. 39.

[13] Id.

[14] Id.

[15] Rollo, pp. 145-149.

[16] CA rollo, p. 39.

[17] See rollo, pp. 146-149.

[18] Rollo, p. 188.

[19] Id. at 13.

[20] CA rollo, pp. 169-173.

[21] Id. at 44-50.

[22] Id. at 40.

[23] Id. at 179-213.

[24] Rollo, p. 13.

[25] Id.

[26] Id.

[27] CA rollo, pp. 39-41.

[28] Id. at 41.

[29] Id.

[30] Id.

[31] Dated June 16, 2016; id. at 441-451.

[32] Id. at 42-43.

[33] Id. at 3-36.

[34] Rollo, pp. 11-23.

[35] Id. at 22.

[36] Section 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 the 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, in so far as these are not inconsistent with the provisions of this Act.

[37] Section 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.

[38] Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES," approved on March 6, 1924.

[39] 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 on December 7, 1933.

[40] Rollo, pp. 17-18. See also Section 33, Rule 39 of the Rules of Court.

[41] Id. at 148.

[42] Id. at 20.

[43] Id. at 82-129.

[44] Id. at 26-27.

[45] Id. at 45-49.

[46] Id. at 165-169.

[47] Id. at 169-172.

[48] Article 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

[49] *Inutan v. Napar Contracting & Allied Services*, 113 Phil. 593, 605-606 (2015).

[50] *Hapitan v. Spouses Lagradilla*, 778 Phil. 42, 57-58 (2016).

[51] *Inutan v. Napar Contracting & Allied Services*, *supra* note 49, at 606.

[52] CA rollo, p. 39.

[53] Rollo, p. 19.

[54] Article 2041. If one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand.

[55] *Inutan v. Napar Contracting & Allied Services*, *supra* note 49, at 606.

[56] See *Catedrilla v. Spouses Lauron*, 709 Phil. 335, 348 (2013); *Miguel v. Montanez*, 680 Phil. 356, 364-365 (2012); *Iloilo Traders Finance, Inc. v. Heirs of Spouses Soriano, Jr.*, 452 Phil. 82, 91 (2003); *Ramnani v. Court of Appeals*, 413 Phil. 195, 209 (2001); and *Morales v. National Labor Relations Commission*, 311 Phil. 121, 132-133 (1995).

[57] 493 Phil. 945 (2005).

[58] Id. at 952-953; emphasis and underscoring supplied.

[59] 767 Phil. 566 (2015).

[60] Id. at 573.

[61] See Act No. 3135.

[62] *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, 501 Phil. 516, 527 (2005), citing *Philippine National Bank v. Adil*, 203 Phil. 492, 499 (1982); *F. David Enterprises v. Insular Bank of Asia and America*, 269 Phil. 551, 557-558 (1990); *Vda. de Zaballero v. Court of Appeals*, 299 Phil. 866, 870-871 (1994).

[63] *Nagtalon v. United Coconut Planters Bank*, 715 Phil. 595, 601-602 (2013).

[64] *Espinoza v. United Overseas Bank Philippines*, 630 Phil. 342, 350 (2010).

[65] *Supra* note 63, at 606-607, citing *Spouses Tolosa v. United Coconut Planters Bank*, 708 Phil. 134 (2013).

[66] The court took exception to the general rule in view of the unusually lower price (P57,396.85 in contrast to its true value of P500,000.00) for which the subject property was sold at public auction. See *Cometa v. Intermediate Appellate Court*, 235 Phil. 569, 574 (1987).

[67] The obligation of a court to issue a writ of possession in favor of the purchaser in a foreclosure of mortgage case ceases to be ministerial when a third-party in possession of the property claims a right adverse to that of the debtor-mortgagor. See *Barican v. Intermediate Appellate Court*, 245 Phil. 316, 320-321 (1988).

[68] Equitable considerations demanded the deferment of the issuance of the writ in a case where the mortgagee failed to return to the mortgagor the surplus from the proceeds of the sale. See *Sulit v. Cuort of Appeals*, 335 Phil. 914, 926 (1997).

[69] *Rollo*, p. 18.

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