

SECOND DIVISION

[A.M. NO. RTJ-03-1750(FORMERLY OCA IPI NO. 02-1431-RTJ), January 14, 2005]

MAMERTO MANQUIZ FOUNDATION, INC., AS REPRESENTED BY ITS PRESIDENT NORBERTO C. MANQUIZ, PETITIONER, VS. HON. ROGELIO M. PIZARRO, PRESIDING JUDGE, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 222, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

A Complaint for violation of Rule 140, Revised Rules of Court and the Code of Judicial Conduct was filed by the Mamerto Maniquiz Foundation, Inc., represented by its President, Norberto C. Maniquiz (complainant) against Judge Rogelio M. Pizarro, Presiding Judge, Regional Trial Court (RTC) of Quezon City, Branch 222.

The factual antecedents that gave rise to the Complaint are:

On 15 December 1997, complainant obtained a loan in the amount of one million pesos from Don C. Mejia (Mejia) secured by a real estate mortgage over a parcel of land and its improvements covered by Transfer Certificate of Title (TCT) No. RT-116481 (316248) of the Registry of Deeds of Quezon City.

When complainant defaulted in the payment of its obligation, Mejia caused the foreclosure of the property thru the Office of the Sheriff of Quezon City by filing an extrajudicial foreclosure of real estate mortgage under Act No. 3135 as amended by Act No. 4118. After the necessary posting was made, the property was thereafter sold at public auction to Mejia who submitted the highest bid and a Certificate of Sale was issued in his favor. The complainant did not exercise its right to redeem the property, consequently Mejia consolidated his ownership over the land, caused the cancellation of the previous title and the issuance of a new title, TCT No. N-211795, in his name.

On 24 May 2000, Mejia filed a verified petition for the issuance of a writ of possession docketed as LRC Case No. Q-12842 (00) before the RTC of Quezon City, Branch 222, where respondent judge presides.^[1] Mejia subsequently amended his Petition to allege further that demand was made on the complainant and those claiming rights under it to vacate the land in question and to surrender possession thereof but the same was not heeded.^[2]

In its opposition to the Petition,^[3] the complainant moved that LRC Case No. Q-12842 (00) be dismissed or, in the alternative, that the proceedings be suspended on the ground that it had filed on 10 August 2000 Civil Case No. Q-00-41555 for declaration of nullity of real estate mortgage, sheriff's sale, TCT No. N-211795, and damages, entitled "Mamerto Maniquiz Foundation, Inc. represented by *Norberto C.*

Maniquiz v. Don C. Mejia, Office of the Ex-officio Sheriff and the Register of Deeds of Quezon City," before the RTC of Quezon City, Branch 105.^[4] Denying complainant's opposition, the petition was granted and a writ of possession was issued in favor of Mejia in a Decision rendered by the trial court dated 15 January 2001.^[5] On 02 February 2001, complainant thru counsel submitted a notice of appeal.^[6] On 14 February 2001, complainant submitted a manifestation of its proposal in an effort to settle the case out of court.^[7] On 19 February 2001, Emma M. Vila, upon prior motion,^[8] filed a third-party complaint to intervene^[9] in LRC Case No. Q-12842 (00).

On 06 March 2001, the trial court in LRC Case No. Q-12842 (00) issued an Order^[10] denying complainant's Notice of Appeal dated 02 February 2001, and held:

It appearing from the Record of this case that oppositor Norberto Maniquiz, through counsel, already withdrew in open court his opposition to the instant petition on December 1, 2000 and that the same had already become final and executory, the "Notice of Appeal" filed by said oppositor Maniquiz, through counsel, on February 2, 2001, considering that he had already lost his standing in court, is hereby DENIED for lack of merit.

On 12 March 2001, complainant thru counsel filed a Petition for Relief from Judgment with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction likewise before the RTC of Quezon City, Branch 222, seeking to set aside the Decision of the trial court dated 15 January 2001 and the Order dated 06 March 2001 denying its notice of appeal.^[11]

On 27 March 2001, the trial court issued an Order denying the Manifestation (proposed settlement), including the motion for leave to file third-party complaint and third-party complaint, but giving due course to the petition for relief from judgment finding the same to be sufficient in form and substance.^[12]

On 30 April 2001, the trial court, for lack of merit, denied complainant's prayer for the issuance of a temporary restraining order and writ of preliminary injunction including the petition for relief from judgment.^[13] The trial court said:

Considering that nowhere in the prayer for a restraining order did oppositor Norberto C. Maniqu[i]z state the acts(s) or person(s) which [sic] he seeks to prevent or enjoin and/or which matter, he wants maintained in status quo: that neither did oppositor Maniquiz, through his counsel, make any such manifestation on his application for the issuance of the said order in the hearing conducted for that purpose; that even if he did, it is still ministerial upon the court to issue a writ of possession in favor of the petitioner even upon an ex-parte petition therefor (*Barican v. IAC*, 162 SCRA 358; *GSIS v. CA*, 169 SCRA 244), the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction contained in the oppositor's "Petition For Relief From Judgment" filed, through counsel, on March 13, 2001 and the Petition for Relief are hereby DENIED for lack of merit.

From this latest Order of the trial court, complainant filed a notice of appeal which was given due course by the trial court in its order dated 17 May 2001 finding the notice of appeal to have been filed within the reglementary period. The trial court in the same Order directed the elevation of the records of the case to the Court of Appeals for appropriate disposition.^[14]

For his part, Mejia filed a motion to dismiss complainant's appeal.

Aside from the remedy of appeal to assail the 30 April 2001 order of the trial court, complainant filed a petition for *Certiorari* docketed as CA-G.R. SP No. 64974 on 01 June 2001 before the Court of Appeals.

Resolving the motion to dismiss the complainant's appeal, and finding the motion to be well-taken on the ground that complainant had already filed a petition for *certiorari* with the Court of Appeals, the trial court granted Mejia's motion to dismiss appeal and at the same time ordered the execution of the Writ of Possession in the Order dated 16 July 2001.^[15] The Order reads:

Acting on "Motion To Dismiss Appeal" and the "Supplemental Motion To Dismiss Appeal" filed by petitioner, through counsel, on May 29, 2001 and July 5, 2001, respectively, and finding the reason given therein to be well-taken, and it appearing from the Record of this case that oppositor Mamerto Maniquiz Foundation, Inc. has already filed a special civil action for certiorari with the Hon. Court of Appeals, the said motions are hereby GRANTED pursuant to Section 1 Rule 41 of the 1997 Rules of Civil Procedure.

Meantime, therefore, let the execution of the Writ of Possession take place until so restrained by a higher judicial authority.

Complainant filed a Motion to set aside and/or defer implementation of the trial court's order dated 16 July 2001 citing the filing of the petition for *Certiorari* before the Court of Appeals.

On 22 August 2001, Mejia filed a Motion to Break-Open.

In an Order dated 17 September 2001, the trial court granted the Motion to Break-Open, and held:

Considering that the oppositor-movant has already clearly abandoned his appeal by the filing of a petition for certiorari with the Honorable Court of Appeals only thirteen (13) days after this Court gave due course to his notice of appeal, and considering further that a trial court may still retain jurisdiction over the case and subject matter involved in the appeal under its residual and corrective powers (Section 5[g] Rule 135, 1997 Rules of Civil Procedure), the "Motion To Set Aside and/or Defer Implementation of Order (dated July 16, 2001)" filed by said oppositor on July 31, 2001 is hereby DENIED.

Meantime, the "Motion to Break Open" filed by petitioner, through counsel, on August 22, 2001 is hereby GRANTED, it appearing from the "Sheriff's Report" dated July 27, 2001 (p. 246, Records) that respondent

Norberto Maniquiz did not want to yield possession of the subject property to the petitioner and instead prevented the latter from entering the premises despite the Order of this Court dated July 16, 2001, the said motion is hereby GRANTED, there being no restraining order yet from any higher judicial authority, and considering further that, the Court hereby reiterates, that the issuance of a writ of possession is ministerial upon a court.^[16]

This was restrained by the Court of Appeals in an Order dated 04 October 2001.^[17] Complainant's petition for *Certiorari* was ultimately dismissed by the Court of Appeals in a Decision dated 12 December 2001 finding that there exists no extrinsic fraud to justify complainant's petition for relief.^[18] Complainant filed a motion for reconsideration.

On 05 February 2002, complainant, thru counsel, filed a motion to inhibit respondent judge.

In the meantime, Mejia filed a motion for the execution of a writ of possession which the trial court denied in an order dated 20 February 2002 "it appearing that there is still a pending motion for reconsideration before the appellate court" at the same time denying the motion for the inhibition of respondent judge.^[19]

On 05 March 2002, complainant filed the administrative complaint against respondent judge before this Court docketed as OCA-IPI-02-1431-RTJ for bias, partiality and gross ignorance of the law in connection with respondent judge's disposition of LRC Case No. Q-12842 (00).^[20]

Meanwhile, complainant's motion for reconsideration of the Decision of the Court of Appeals dated 04 October 2001 dismissing complainant's petition for *certiorari* in CA-G.R. SP No. 64974 was dismissed in the resolution of the Court of Appeals dated 15 March 2002.

Per first indorsement dated 18 April 2002 by the Court Administrator, respondent judge was required to file his Comment on the Complaint.^[21]

Respondent judge filed his Compliance on 20 May 2002.^[22] According to the respondent judge, after Mejia had presented his evidence in LRC Case No. Q-12842 (00), complainant, thru its President Norberto C. Maniquiz, assisted by counsel, withdrew its opposition to the petition for the issuance of a writ of possession on 01 December 2000, the date set for the presentation of complainant's evidence after Mejia agreed to give complainant forty-five (45) days to negotiate with him (Mejia) for the repurchase of the property. Since the negotiations did not prosper, the trial court rendered its decision granting the writ of possession as prayed for. The denial of complainant's notice of appeal in the trial court's Order of 06 March 2001 is justified because it has lost its standing in court by the withdrawal of its opposition as stated earlier. The subsequent issuance of the writ of possession to Mejia is, according to respondent judge, a ministerial duty of the court. The order dated 16 July 2001 granting the motion of Mejia to dismiss complainant's notice of appeal was issued on account of the *certiorari* petition filed by the complainant which the respondent viewed as inconsistent with the remedy of appeal.

On 20 September 2002, complainant tendered its Comments thereon.^[23] It denies respondent judge's claim that it withdrew its opposition to the petition at the hearing on 01 December 2000. On the contrary, the hearing was deferred in the hope that the parties would arrive at a compromise and ultimately agree to settle the case.

In a Resolution of this Court dated 13 January 2003, the Court noted the administrative complaint filed by the complainant, respondent's Comment and complainant's reply.^[24]

In a subsequent resolution dated 13 January 2003, the Court resolved that this case be re-docketed as a regular administrative matter and the issue of whether or not there was withdrawal of complainant's opposition to the grant of writ of possession amounting to its loss of standing in court be referred to the Presiding Justice of the Court of Appeals for raffle among the members and to submit his investigation, report and recommendation within sixty (60) days from receipt of the record.^[25]

The case was raffled to Associate Justice Buenaventura J. Guerrero.

On 12 March 2003, after having been duly notified, the parties appeared at the hearing conducted at the chambers of Justice Guerrero. In the Order of Justice Guerrero dated 13 March 2003, the parties, by agreement, were given fifteen (15) days to file simultaneous memoranda, after which the case was considered submitted for report and recommendation.^[26] Justice Guerrero, henceforth, submitted his REPORT AND RECOMMENDATION dated 11 April 2003 stating that "there was indeed a withdrawal of complainant's opposition," as supported by evidence.

To be addressed in the instant case are the following: (1) the correctness of the Decision dated 15 January 2001, granting the petition for the issuance of a writ of possession in favor of Mejia; (2) the break-open Order dated 17 September 2001; (3) the order dated 06 March 2001 denying notice of appeal of the Decision rendered by Judge Pizarro which granted the petition for a writ of possession; and (4) the order dated 16 July 2001 granting Mejia's motion to dismiss complainant's notice of appeal denying complainant's petition from relief of judgment, among other things, after the trial court through the respondent judge initially gave due course to it.

Complainant claims that the decision^[27] and the Orders in question were all issued at a time when its complaint for annulment of mortgage and sheriff's sale (Civil Case No. Q-00-41555) was still pending before another branch of the trial court (Branch 105), thus, respondent judge allegedly failed to observe peer courtesy when he issued said break-open Order despite knowledge that the result of Civil Case No. Q-00-41555 would affect the issuance of the writ of possession. Complainant further impugns respondent judge's Order for the execution of the writ of possession and break-open Order despite the pendency of the petition for *Certiorari* before the Court of Appeals and the fact that the records of the case were already ordered elevated to the Court of Appeals.

The Complaint is not meritorious.