

## SECOND DIVISION

[ G.R. No. 191540, January 21, 2015 ]

**SPOUSES JOSE O. GATUSLAO AND ERMILA LEONILA LIMSIACO-GATUSLAO, PETITIONERS, VS. LEO RAY V. YANSON, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Petitioners spouses Jose O. Gatuslao and Ermila Leonila Limsiaco-Gatuslao (petitioners) are assailing the December 8, 2009<sup>[1]</sup> Order of the Regional Trial Court (RTC) of Bacolod City, Branch 49 in Cad. Case No. 09-2802 which granted respondent Leo Ray<sup>[2]</sup> Yanson's (respondent) *Ex Parte* Motion for the Issuance of Writ of Possession over the properties being occupied by petitioners, as well as the February 26, 2010 RTC Order<sup>[3]</sup> denying petitioners' motion for reconsideration thereto.

#### ***Factual Antecedents***

Petitioner Ermila Leonila Limsiaco-Gatuslao is the daughter of the late Felicisimo Limsiaco (Limsiaco) who died intestate on February 7, 1989. Limsiaco was the registered owner of two parcels of land with improvements in the City of Bacolod described as Lots 10 and 11, Block 8 of the subdivision plan Psd-38577 and covered by Transfer Certificates of Title (TCT) Nos. T-33429<sup>[4]</sup> and T-24331.<sup>[5]</sup>

Limsiaco mortgaged the said lots along with the house standing thereon to Philippine National Bank (PNB). Upon Limsiaco's failure to pay, PNB extrajudicially foreclosed on the mortgage and caused the properties' sale at a public auction on June 24, 1991 where it emerged as the highest bidder. When the one-year redemption period expired without Limsiaco's estate redeeming the properties, PNB caused the consolidation of titles in its name. Ultimately, the Registry of Deeds of Bacolod City cancelled TCT Nos. T-33429 and T-24331 and in lieu thereof issued TCT Nos. T-308818<sup>[6]</sup> and T-308819<sup>[7]</sup> in PNB's name on October 25, 2006.

On November 10, 2006, a Deed of Absolute Sale<sup>[8]</sup> was executed by PNB conveying the subject properties in favor of respondent. As a consequence thereof, the Registry of Deeds of Bacolod City issued TCT Nos. T-311125<sup>[9]</sup> and T-311126<sup>[10]</sup> in respondent's name in lieu of PNB's titles.

Then, as a registered owner in fee simple of the contested properties, respondent filed with the RTC an *Ex-Parte* Motion for Writ of Possession<sup>[11]</sup> pursuant to Section 7 of Act No. 3135,<sup>[12]</sup> as amended by Act No. 4118 (Act No. 3135, as amended),<sup>[13]</sup> docketed as Cad. Case No. 09-2802.

In their Opposition,<sup>[14]</sup> petitioners argued that the respondent is not entitled to the issuance of an *ex-parte* writ of possession under Section 7 of Act No. 3135 since he was not the buyer of the subject properties at the public auction sale and only purchased the same through a subsequent sale made by PNB. Not being the purchaser at the public auction sale, respondent cannot file and be granted an *ex parte* motion for a writ of possession. Petitioners also asserted that the intestate estate of Limsiaco has already instituted an action for annulment of foreclosure of mortgage and auction sale affecting the contested properties.<sup>[15]</sup> They argued that the existence of the said civil suit bars the issuance of the writ of possession and that whatever rights and interests respondent may have acquired from PNB by virtue of the sale are still subject to the outcome of the said case.

### ***Ruling of the Regional Trial Court***

The RTC granted the issuance of the writ of possession in an Order<sup>[16]</sup> dated December 8, 2009. It cited the Court's pronouncement in *China Banking Corporation v. Lozada*,<sup>[17]</sup> viz:

The Court recognizes the rights acquired by the purchaser of the foreclosed property at the public auction sale upon the consolidation of his title when no timely redemption of the property was made, x x x.

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. x x x Possession of the land then becomes an absolute right of the purchaser as confirmed owner. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.

The purchaser, therefore, in the public auction sale of a foreclosed property is entitled to a writ of possession x x x.<sup>[18]</sup>

PNB, therefore, as the absolute owner of the properties is entitled to a writ of possession. And since respondent purchased the properties from PNB, the former has necessarily stepped into the shoes of the latter. Otherwise stated, respondent, by subrogation, has the right to pursue PNB's claims against petitioners as though they were his own.

The dispositive portion of the above Order reads:

WHEREFORE, premises considered, the Court hereby issues a writ of possession in favor of movant Leo Ray V. Yanson ordering Spouses Jose and Mila Gatuslao, their heirs, assigns, successors-in-interest, agents, representatives and/or any and all other occupants or persons claiming any interest or title of the subject property to deliver the possession of said property to the herein movant/ petitioner.

SO ORDERED.<sup>[19]</sup>

Petitioners moved for reconsideration<sup>[20]</sup> which was denied in an Order<sup>[21]</sup> dated February 26, 2010, thus:

WHEREFORE, the Motion for Reconsideration filed by Oppositors is hereby DENIED. Thus, the Order dated December 8, 2009 stands.

SO ORDERED.<sup>[22]</sup>

Respondent on March 19, 2010 moved to execute the possessory writ<sup>[23]</sup> while petitioners on April 15, 2010 filed with this Court the present Petition for Review on *Certiorari*.

On September 30, 2010, the RTC issued an Order<sup>[24]</sup> directing the implementation of the writ. And per Sheriff's Return of Service,<sup>[25]</sup> the same was fully implemented on March 14, 2011.

### **Issues**

1. According to petitioners, the pending action for annulment of foreclosure of mortgage and the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession;
2. Claiming violation of their right to due process, petitioners likewise assert that as they were not parties to the foreclosure and are, thus, strangers or third parties thereto, they may not be evicted by a mere *ex parte* writ of possession; and
3. Lastly, petitioners argue that respondent, a mere purchaser of the contested properties by way of a negotiated sale between him and PNB, may not avail of a writ of possession pursuant to Section 7 of Act No. 3135, as amended, as he is not the purchaser at the public auction sale. Petitioners further contend that respondent has no right to avail of the writ even by way of subrogation.

### **Our Ruling**

Preliminarily, we note that petitioners' direct resort to this Court from the assailed Orders of the RTC violates the rule on hierarchy of courts. Their remedy lies with the Court of Appeals. Considering however the length of time this case has been pending and in view of our January 26, 2011 Resolution<sup>[26]</sup> giving due course to the Petition, we deem it proper to adjudicate the case on its merits.

The Petition is denied.

*It is settled that the issuance of a Writ of Possession may not be stayed by a pending*

*action for annulment of mortgage or the foreclosure itself.*

It is petitioners' stand that the pending action for annulment of foreclosure of mortgage and of the corresponding sale at public auction of the subject properties operates as a bar to the issuance of a writ of possession.

The Court rules in the negative. *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*<sup>[27]</sup> reiterates the long-standing rule that:

[I]t is settled that a pending action for annulment of mortgage or foreclosure sale does not stay the issuance of the writ of possession. The trial court, where the application for a writ of possession is filed, does not need to look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.

This is in line with the ministerial character of the possessory writ. Thus, in *Bank of the Philippine Islands v. Tarampi*,<sup>[28]</sup> it was held:

**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.**<sup>[29]</sup>  
(Emphases supplied)

Clearly, petitioners' argument is devoid of merit.

*Petitioners are not strangers or third parties to the foreclosure sale; they were not deprived of due process.*

Section 7 of Act No. 3135, as amended, sets forth the following procedure in the availment of and issuance of a writ of possession in cases of extrajudicial foreclosures, viz:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance (Regional Trial Court) 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.

Although the above provision clearly pertains to a writ of possession availed of and issued within the redemption period of the foreclosure sale, the same procedure also applies to a situation where a purchaser is seeking possession of the foreclosed property bought at the public auction sale *after* the redemption period has expired without redemption having been made.<sup>[30]</sup> The only difference is that in the latter case, no bond is required therefor, as held in *China Banking Corporation v. Lozada*,<sup>[31]</sup> thus:

It is thus settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of the sale. As such, he is entitled to the possession of the said property and can demand it at any time following the consolidation of ownership in his name and the issuance to him of a new transfer certificate of title. **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 of Act No. 3135, as amended. No such bond is required after the redemption period if the property is not redeemed.** x x  
x<sup>[32]</sup> (Emphasis supplied)

Upon the expiration of the period to redeem and no redemption was made, the purchaser, as confirmed owner, has the absolute right to possess the land and the issuance of the writ of possession becomes a ministerial duty of the court upon proper application and proof of title.<sup>[33]</sup>

Nevertheless, where the extrajudicially foreclosed real property is in the possession of a third party who is holding the same adversely to the judgment debtor or mortgagor, the RTC's duty to issue a writ of possession in favor of the purchaser of said real property ceases to be ministerial and, as such, may no longer proceed *ex parte*.<sup>[34]</sup> In such a case, the trial court must order a hearing to determine the nature of the adverse possession.<sup>[35]</sup> For this exception to apply, however, it is not