

SECOND DIVISION

[G.R. No. 184045, January 22, 2014]

**SPOUSES NICASIO C. MARQUEZ AND ANITA J. MARQUEZ,
PETITIONERS, VS. SPOUSES CARLITO ALINDOG AND CARMEN
ALINDOG, RESPONDENTS.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated February 29, 2008 and Resolution^[3] dated August 6, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97744 finding no grave abuse of discretion on the part of the Regional Trial Court of Tagaytay City, Branch 18 (RTC) in issuing the Orders dated November 14, 2005^[4] and January 17, 2007^[5] in SCA No. TG-05-2521. Based on these orders, a writ of preliminary injunction was issued against petitioners-spouses Nicasio C. Marquez and Anita J. Marquez (Sps. Marquez), enjoining them from taking possession of the property subject of this case despite the consolidation of their title over the same.

The Facts

Records show that sometime in June 1998, petitioner Anita J. Marquez (Anita) extended a loan in the amount of P500,000.00 to a certain Benjamin Gutierrez (Gutierrez). As security therefor, Gutierrez executed a Deed of Real Estate Mortgage^[6] dated June 16, 1998 over a parcel of land located in Tagaytay City with an area of 660 square meters, more or less, covered by Transfer Certificate of Title (TCT) No. T-13443^[7] (subject property), registered under the name of Benjamin A. Gutierrez, married to Liwanag Camerin (Sps. Gutierrez). The mortgage was duly annotated on the dorsal portion of TCT No. T-13443, which Sps. Marquez had verified as clean prior to the mortgage.^[8]

Since Gutierrez defaulted in the payment of his loan obligation, Anita sought the extra-judicial foreclosure of the subject property. At the public auction sale held on January 19, 2000, Anita emerged as the highest bidder for the amount of P1,171,000.00.^[9] Upon Gutierrez's failure to redeem the same property within the prescribed period therefor, title was consolidated under TCT No. T-41939^[10] on November 5, 2001 (in the name of Anita J. Marquez, married to Nicasio C. Marquez) which, however, bore an annotation of adverse claim^[11] dated March 2, 2000 in the names of respondents-spouses Carlito and Carmen Alindog (Sps. Alindog). Said annotation was copied from an earlier annotation on TCT No. T-13443 made only after the subject property's mortgage to Sps. Marquez.

Subsequently, or on March 21, 2000, Sps. Alindog filed a civil case for annulment of real estate mortgage and certificate of sale with prayer for damages against Sps.

Marquez and a certain Agripina Gonzales (Gonzales) before the RTC, docketed as Civil Case No. TG-1966 (annulment case). In their complaint,^[12] Sps. Alindog alleged that they purchased^[13] the subject property from Gutierrez way back in September 1989, but were unable to secure a certificate of title in their names because Gonzales – to whom they have entrusted said task – had deceived them in that they were assured that the said certificate was already being processed when such was not the case.^[14] Eventually, they found out that the property had already been mortgaged to Sps. Marquez, and that when they tried to contact Gonzales for an explanation, she could no longer be found. Separately, Sps. Alindog averred that when the mortgage was executed in favor of Sps. Marquez, Gutierrez was already dead.^[15]

In their defense,^[16] Sps. Marquez disputed Sps. Alindog's ownership over the subject property, arguing that the purported sale in the latter's favor was never registered and therefore, not binding upon them. Further, they insisted that their certificate of title, TCT No. T-41939, was already indefeasible, and cannot be attacked collaterally.

Meanwhile, on March 16, 2005, Anita filed an *ex-parte* petition for the issuance of a writ of possession^[17] (*ex-parte* petition) before the RTC, docketed as LRC Case No. TG-05-1068, claiming that the same is ministerial on the court's part following the consolidation of her and her husband's title over the subject property. Impleaded in said petition are Sps. Gutierrez, including all persons claiming rights under them.

The RTC Rulings and Subsequent Proceedings

In an **Order**^[18] **dated August 1, 2005**, the RTC granted Anita's *ex-parte* petition and thereby directed the issuance of a writ of possession in her favor. Consequently, a notice to vacate^[19] dated September 23, 2005 was issued by Acting Sheriff Teodorico V. Cosare (Sheriff Cosare) against Sps. Gutierrez and all persons claiming rights under them. Sps. Alindog were served with a copy of the said notice to vacate on September 27, 2005.^[20]

Claiming that they would suffer irreparable injury if the implementation of the writ of possession in favor of Sps. Marquez would be left unrestrained, Sps. Alindog sought the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction with prayer for damages,^[21] in a separate case docketed as SCA No. TG-05-2521^[22] (injunction case) which was raffled to the same court.

While it appears that the RTC issued a 72-hour TRO on September 29, 2005 in Sps. Alindog's favor, records nonetheless show that said order was not extended to a full 20-day TRO.^[23] To this end, the Sheriff's Return^[24] dated November 14, 2005 shows that Sheriff Cosare was able to implement the writ of possession on November 11, 2005, turning over the possession of the subject property to Sps. Marquez.

After further proceedings on the injunction case, the RTC, through an **Order**^[25] **dated November 14, 2005**, issued a writ of preliminary injunction enjoining Sps. Marquez from taking possession of the subject property until after the controversy

has been fully resolved on the merits. The said issuance was based on the RTC's appreciation of the initial evidence adduced by Sps. Alindog, concluding that they appear to have a right to be protected. Thus, notwithstanding the consolidation of Sps. Marquez's title over the subject property, the RTC granted Sps. Alindog's prayer for injunctive relief, holding that any further dispossession on their part would cause them irreparable injury.^[26]

Aggrieved, Sps. Marquez moved for reconsideration,^[27] essentially pointing out that, as the confirmed and registered owners of the subject property, they are entitled to its possession as a matter of right. They argued that pursuant to Sections 7^[28] and 8^[29] of Act No. 3135,^[30] as amended by Act No. 4118,^[31] the RTC was legally bound to place them in possession of the subject property pending resolution of the annulment case. Further, it is their position that the purpose for the issuance of the injunctive writ – *i.e.*, to restrain the implementation of the writ of possession – had already been rendered moot and academic by its actual enforcement in the *interim*.

For their part, Sps. Alindog filed a Motion for Approval of Cash Bond and to Regain Possession^[32] of the subject property.

In an Order^[33] dated January 17, 2007, the RTC denied the motion of Sps. Marquez, while granted that of Sps. Alindog. Unperturbed, Sps. Marquez elevated the case to the CA on *certiorari*.^[34]

The CA Ruling

In a Decision^[35] dated February 29, 2008, the CA denied Sps. Marquez's petition as it found no grave abuse of discretion on the RTC's part when it issued the injunctive writ that enjoined Sps. Marquez from taking possession of the subject property. It observed that Sps. Alindog had indeed "adduced *prima facie* proof of their right to possess the subject property"^[36] while the annulment case was pending, adding that the latter's "right to remain in possession"^[37] proceeds from the fact of the subject property's earlier sale to them. Thus, while Sps. Marquez concededly had a right to possess the subject property on account of the consolidation of the title in their names, the CA nonetheless found no fault on the part of the RTC for "proceeding with caution"^[38] in weighing the conflicting claims of the parties and subsequently issuing the writ of preliminary injunction in Sps. Alindog's favor.

Dissatisfied, Sps. Marquez moved for reconsideration^[39] which was, however, denied in a Resolution^[40] dated August 6, 2008, hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in finding no grave abuse of discretion on the part of the RTC when it issued the injunctive writ which enjoined Sps. Marquez from taking possession of the subject property.

The Court's Ruling

The petition is meritorious.

It is an established rule that the purchaser in an extra-judicial foreclosure sale is entitled to the possession of the property and can demand that he be placed in possession of the same either during (with bond) or after the expiration (without bond) of the redemption period therefor. To this end, the Court, in *China Banking Corp. v. Sps. Lozada*^[41] (*China Banking Corp.*), citing several cases on the matter, explained that a writ of possession duly applied for by said purchaser **should issue as a matter of course**, and thus, merely **constitutes a ministerial duty on the part of the court**, viz.:^[42]

The procedure for extrajudicial foreclosure of real estate mortgage is governed by Act No. 3135, as amended. **The purchaser at the public auction sale of an extrajudicially foreclosed real property may seek possession thereof** in accordance with Section 7 of Act No. 3135, as amended, which provides:

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 or 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 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.**

The Court expounded on the application of the foregoing provision in *De Gracia v. San Jose*, thus:

As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession **during the redemption** period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon

the filing of such motion 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. Under the legal provisions above copied, **the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court.** And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.

Strictly, Section 7 of Act No. 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the 12-month period for redemption. Upon the purchaser's filing of the *ex parte* petition and posting of the appropriate bond, the RTC shall, as a matter of course, order the issuance of the writ of possession in the purchaser's favor.

In *IFC Service Leasing and Acceptance Corporation v. Nera*, the Court reasoned that if under Section 7 of Act No. 3135, as amended, the RTC has the power during the period of redemption to issue a writ of possession on the *ex parte* application of the purchaser, **there is no reason why it should not also have the same power after the expiration of the redemption period, especially where a new title has already been issued in the name of the purchaser.** Hence, the procedure under Section 7 of Act No. 3135, as amended, may be availed of by a purchaser seeking possession of the foreclosed property he bought at the public auction sale **after the redemption period has expired** without redemption having been made.

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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. 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.** (Emphases and underscoring supplied; citations and emphases in the original omitted)