

## FIRST DIVISION

[ G.R. No. 187973, January 20, 2014 ]

**LZK HOLDINGS AND DEVELOPMENT CORPORATION,  
PETITIONER, VS. PLANTERS DEVELOPMENT BANK,  
RESPONDENT.**

### RESOLUTION

**REYES, J.:**

This resolves the appeal filed by petitioner LZK Holdings and Development Corporation (LZK Holdings) assailing the Decision<sup>[1]</sup> dated January 27, 2009 of the Court of Appeals (CA) in CA-G.R. S.P. No. 103267 affirming the Order<sup>[2]</sup> dated April 8, 2008 of the Regional Trial Court (RTC) of San Fernando City (San Fernando), La Union, Branch 66, which issued a writ of possession in favor of respondent Planters Development Bank (Planters Bank).

The facts are not disputed.

LZK Holdings obtained a P40,000,000.00 loan from Planters Bank on December 16, 1996 and secured the same with a Real Estate Mortgage over its lot located in La Union. The lot measures 589 square meters and is covered by Transfer Certificate of Title No. T-45337.

On September 21, 1998, the lot was sold at a public auction after Planters Bank extrajudicially foreclosed the real estate mortgage thereon due to LZK Holdings' failure to pay its loan. Planters Bank emerged as the highest bidder during the auction sale and its certificate of sale was registered on March 16, 1999.

On April 5, 1999, LZK Holdings filed before the RTC of Makati City, Branch 150, a complaint for annulment of extrajudicial foreclosure, mortgage contract, promissory note and damages. LZK Holdings also prayed for the issuance of a temporary restraining order (TRO) or writ of preliminary injunction to enjoin the consolidation of title over the lot by Planters Bank.

On December 27, 1999, Planters Bank filed an *ex-parte* motion for the issuance of a writ of possession with the RTC-San Fernando.

On March 13, 2000 or three (3) days before the expiration of LZK Holdings' redemption period, the RTC-Makati issued a TRO effective for 20 days enjoining Planters Bank from consolidating its title over the property. On April 3, 2000, the RTC-Makati ordered the issuance of a writ of preliminary injunction for the same purpose<sup>[3]</sup> but the writ was issued only on June 20, 2000 upon LZK Holdings' posting of a P40,000.00 bond.

In the meantime, Planters Bank succeeded in consolidating its ownership over the

property on April 24, 2000. However, the proceedings for its *ex-parte* motion for the issuance of a writ of possession was suspended by the RTC-San Fernando in an Order dated May 11, 2000 in view of the TRO and writ of preliminary injunction issued by the RTC Makati. Planters Bank moved for reconsideration but its motion was denied by the RTC-San Fernando in an Order dated September 1, 2000.<sup>[4]</sup>

Meanwhile, upon motion of LZK Holdings, the RTC-Makati declared as null and void the consolidated title of Planters Bank in an Order<sup>[5]</sup> dated June 2, 2000. Such ruling was affirmed by the CA in a Decision<sup>[6]</sup> dated February 26, 2004 in CA-G.R. SP No. 59327. When the matter reached the Court *via* G.R. No. 164563, we sustained the CA's judgment in our Resolution<sup>[7]</sup> dated September 13, 2004.

Planters Bank also appealed the May 11, 2000 Order of the RTC-San Fernando which held in abeyance the resolution of its *ex parte* motion for the issuance of a writ of possession. This time, Planters Bank was victorious. The CA granted the appeal and annulled the assailed order of the RTC-San Fernando. Aggrieved, LZK Holdings sought recourse with the Court in a petition for review docketed as G.R. No. 167998.<sup>[8]</sup> In Our Decision dated April 27, 2007, we affirmed the CA's ruling and decreed that Planters Bank may apply for and is entitled to a writ of possession as the purchaser of the property in the foreclosure sale, *viz*:

"A writ of possession is a writ of execution employed to enforce a judgment to recover the possession of land. It commands the sheriff to enter the land and give possession of it to the person entitled under the judgment. It may be issued in case of an extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118.

Under said provision, the writ of possession may be issued to the purchaser in a foreclosure sale either within the one-year redemption period upon the filing of a bond, or after the lapse of the redemption period, without need of a bond.

We have consistently held that the duty of the trial court to grant a writ of possession is ministerial. Such writ 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 trial court. Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.

To emphasize the writ's ministerial character, we have in previous cases disallowed injunction to prohibit its issuance, just as we have held that issuance of the same may not be stayed by a pending action for annulment of mortgage or the foreclosure itself.

x x x x

x x x [Planters Bank], as the purchaser in the foreclosure sale, may apply for a writ of possession during the redemption period. In fact, it did apply for a writ on December 27, 1999, well within the redemption period. The San Fernando RTC, given its ministerial duty to issue the writ, therefore, should have acted on the *ex parte* petition. The injunction order is of no moment because it should be understood to have merely stayed the consolidation of title. As previously stated, an injunction is not allowed to prohibit the issuance of a writ of possession. Neither does the pending case for annulment of foreclosure sale, mortgage contract, promissory notes and damages stay the issuance of said writ.

Lastly, the trial on the merits has not even started. Until the foreclosure sale of the property in question is annulled by a court of competent jurisdiction, petitioner is bereft of valid title and of the right to prevent the issuance of a writ of possession to [Planters Bank]. Until then, it is the trial court's ministerial function to grant the possessory writ to [Planters Bank]."<sup>[9]</sup> (Citations omitted)

Armed with the above ruling, Planters Bank filed before the RTC-San Fernando a motion to set *ex-parte* hearing for the issuance of a writ of possession. LZK Holdings opposed the motion. In an Order dated April 2, 2008, the RTC-San Fernando denied the opposition and set the hearing on April 14, 2008. On April 8, 2008, the RTC-San Fernando issued another Order<sup>[10]</sup> declaring the scheduled hearing moot and academic and granting Planter Bank's *ex-parte* motion for the issuance of a writ of possession which was filed as early as December 27, 1999. The decretal portion of the order reads:

WHEREFORE, premises considered, the petitiOn is hereby granted, hence the order setting the case for *ex-parte* hearing on April 14, 2008 is rendered moot and academic by this order. Let [a] Writ of Possession issue in favor of Planters Development Bank and the Deputy Sheriff of this Court is hereby directed to place Planters Development Bank or any of its authorized representatives in possession of the subject parcel of land, together with all the improvements existing thereon, covered by TCT- 45337 of the Register of Deeds for the province of La Union against LZK HOLDINGS AND DEVELOPMENT CORPORATION (referred to as LZK) including all other persons/occupants who are claiming rights under them and who are depriving [Planters Bank] of its right to possess the above-described property upon the filing of bond by [Planters Bank] in the amount of two million pesos (Php2,000,000.00).

SO ORDERED.<sup>[11]</sup>

In its herein assailed Decision<sup>[12]</sup> dated January 27, 2009, the CA affirmed the foregoing ruling and dismissed LZK Holdings' petition for *certiorari* docketed as CA-G.R. SP No. 103267. The CA likewise denied LZK Holdings' motion for reconsideration in its Resolution<sup>[13]</sup> dated May 12, 2009.