

## FIRST DIVISION

[ G.R. No. 162757, December 11, 2013 ]

**UNITED COCONUT PLANTERS BANK, PETITIONER, VS.  
CHRISTOPHER LUMBO AND MILAGROS LUMBO, RESPONDENTS.**

### D E C I S I O N

**BERSAMIN, J.:**

The implementation of a writ of possession issued pursuant to Act No. 3135 at the instance of the purchaser at the foreclosure sale of the mortgaged property in whose name the title has been meanwhile consolidated cannot be prevented by the injunctive writ.

#### The Case

Petitioner United Coconut Planters Bank (UCPB) appeals the decision promulgated on November 27, 2003,<sup>[1]</sup> whereby the Court of Appeals (CA) reversed and set aside the order issued on March 19, 2002 by the Regional Trial Court (RTC) of Kalibo, Aklan, Branch 8,<sup>[2]</sup> denying the motion of respondents Christopher Lumbo and Milagros Lumbo for the issuance of a writ of preliminary injunction to prevent the implementation of the writ of possession issued against them.

#### Antecedents

The respondents borrowed the aggregate amount of P12,000,000.00 from UCPB. To secure the performance of their obligation, they constituted a real estate mortgage on a parcel of land located in Boracay, Aklan and all the improvements thereon that they owned and operated as a beach resort known as Titay's South Beach Resort. Upon their failure to settle the obligation, UCPB applied on November 11, 1998 for the extrajudicial foreclosure of the mortgage, and emerged as the highest bidder at the ensuing foreclosure sale held on January 12, 1999. The certificate of sale was issued on the same day, and UCPB registered the sale in its name on February 18, 1999. The title over the mortgaged property was consolidated in the name of UCPB after the respondents failed to redeem the property within the redemption period.

On January 7, 2000, the respondents brought against UCPB in the RTC<sup>[3]</sup> an action for the annulment of the foreclosure, legal accounting, injunction against the consolidation of title, and damages (Civil Case No. 5920).

During the pendency of Civil Case No. 5920, UCPB filed an *ex parte* petition for the issuance of a writ of possession to recover possession of the property (Special Proceedings No. 5884). On September 5, 2000, the RTC granted the *ex parte* petition of UCPB,<sup>[4]</sup> and issued on December 4, 2001 the writ of possession directing the sheriff of the Province of Aklan to place UCPB in the actual possession of the property. The writ of possession was served on the respondents on January

23, 2002 with a demand for them to peacefully vacate on or before January 31, 2002. Although the possession of the property was turned over to UCPB on February 1, 2002, they were allowed to temporarily remain on the property for humanitarian reasons.<sup>[5]</sup>

On February 14, 2002, the respondents filed in the RTC handling Special Proceedings No. 5884 a petition to cancel the writ of possession and to set aside the foreclosure sale.<sup>[6]</sup> They included an application for a writ of preliminary injunction and temporary restraining order to prevent the implementation of the writ of possession.

It is notable that Special Proceedings No. 5884 was consolidated with Civil Case No. 5920 on March 1, 2002.<sup>[7]</sup>

On March 19, 2002, the RTC denied the respondents' application for the issuance of a writ of preliminary injunction.<sup>[8]</sup> Aggrieved by the denial, the respondents brought a petition for *certiorari* and/or *mandamus* in the CA (C.A.-G.R. SP No. 70261).

### **The CA's Ruling**

On November 27, 2003, the CA resolved C.A.-G.R. SP No. 70261 by granting the respondents' petition, setting aside the assailed orders, and enjoining the RTC from implementing the writ of possession "pending the final disposition of the petition for its cancellation and the annulment of the foreclosure sale."<sup>[9]</sup> It held as follows:

A careful review of the records of this case reveals that the respondent judge committed glaring errors of jurisdiction in his assailed order in denying the petitioners' entreaty for injunctive relief pending the determination of the propriety of the writ of possession and the adjudication of the action for the annulment of the disputed foreclosure sale.

In the assailed order, the respondent judge opined, albeit erroneously, that the present petition for the cancellation of the writ of possession is premature to avail of the remedies under Section 8 of Act 3135 as amended by Act 4118 considering that the petitioners are still in possession of the foreclosed property.

Sec. 8 of Act 3135 as amended by Act 4118, provides:

*"The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the*

*bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal."*

As the records would show, although the petitioners are still in possession of the subject properties as they were allowed to temporarily stay thereat by the respondent bank, it cannot be gainsaid that the latter has already obtained the possession of the said properties. This being so, the petitioners have the legal recourse to file a petition for the cancellation of the writ of possession based on the cited legal grounds, i.e. that the mortgage was not violated or that the sale was not made in accordance with the provisions of the law. Clearly, the respondent judge erred in declaring that the said petition was prematurely filed.

Contrary to the dissertation of the respondent judge, the plain language of the law actually does not require the debtor to file a petition to cancel the writ of possession only after the purchaser had obtained possession of the foreclosed property subject of the writ. It merely states that the petition should not be filed later than thirty (30) days after the purchaser was given possession. Neither does the law qualify whether the possession is full or partial, nor permanent or temporary, as to justify the availability of the legal remedy to the mortgagor. What the plain language of the law espouses is the right of the debtor to question the validity of the foreclosure sale and the propriety of the issuance of the writ of possession.

Statutes, it must be stressed, should be construed in light of the objective to be achieved and the evil or mischief to be suppressed. Equally notable is the well-established rule that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent.

Sadly, the respondent judge, in erroneously interpreting Section 8 of Act 3135, failed to observe these elementary rules considering that the law is clear and unambiguous (sic) and in fact explicitly manifest its true intention to afford the debtor legal recourses. Instead of conforming to these rules, the respondent judge interpreted the said law in a manner which betrays its true intent.

Admittedly, in this case, a writ of possession was issued against the petitioners and that the respondent bank had already been given possession of the foreclosed property although the same is only partial. This being the case, the petitioners clearly have the legal recourse to file the said petition.

In fact, this disquisition of the respondent judge respecting the untimely filing of the petition for the cancellation of the disputed writ completely contradicts the basis of his subsequent pronouncement that injunctive relief cannot be made available to the petitioners since the act

complained of is already fait accompli. On one hand, when it comes to the issue of the timeliness of the petition, the disposition of the respondent judge is that the respondents are yet to gain possession of the foreclosed properties. In contrast, when it respects the propriety of the prayer for injunctive relief, he in turn declares that the act sought to be restrained is already fait accompli on the supposition that although the Sheriff's Return of Service dated 6 March 2002 is denominated as a partial return, the possession of the said properties had already been given to the respondent judge.

Peremptorily, the respondent judge gravely abused his discretion in bending his discourses on the matter of possession depending upon what issue implores adjudication. What is undeniable, however, is the fact that the petitioners are still in possession of the foreclosed property as they are admittedly allowed to temporarily stay thereat and that irrespective thereof, they have every right under the law to question the propriety of the issued writ by way of a petition.

Moreover, the respondent judge erred in declaring that he could not act on the application for injunctive relief because the writ was issued by another court of coordinate jurisdiction. The petition was filed before the same branch of the RTC of Kalibo, Aklan but was re-raffled to another branch and later on consolidated before the branch of the respondent judge where the action for the annulment of the foreclosure sale is pending. Thus, the case, which incidentally is a mere continuation of the de-parte proceeding before the same court though not before the same branch.

What is more appalling is that by denying the petitioners' prayer for injunctive relief, he in effect resolved the main case before him, which is the petition for the cancellation of the writ of possession. The course of his dissertation in the assailed order already manifests his predisposition to deny the petition for the cancellation of the disputed writ. Considering that there is an urgent and paramount necessity for the writ to be issued in order to prevent serious damage on the part of the petitioners pending the trial proceedings in the annulment suit, especially so since the same is also pending before the respondent judge, the Resolution dated 22 October 2003 which temporarily enjoins the implementation of the writ of possession issued against the petitioners is hereby made permanent awaiting the final disposition on the issues regarding the validity of the foreclosure sale and the said writ of possession.<sup>[10]</sup>

UCPB sought the reconsideration of the decision, but the CA denied its motion for reconsideration on March 8, 2004.

Hence, UCPB appeals by petition for review on *certiorari*.

### **Issues**

In its petition for review,<sup>[11]</sup> UCPB asserts that the CA did not rule in accordance with prevailing laws and jurisprudence when it granted the respondents' petition for *certiorari* and enjoined the implementation of the writ of possession issued by the

RTC in favor of UCPB; that the respondents were not entitled to the issuance of an injunctive writ; that assuming, *arguendo*, that the CA was within its jurisdiction to issue the assailed decision and resolution, no bond was posted to the effect that the respondents would pay to UCPB all the damages that it would sustain by reason of the injunction should the Court finally decide that they were not entitled to the injunctive writ; that the assailed decision and resolution were tantamount to a pre-judgment of the respondents' petition to cancel the writ of possession; and that the respondents were illegally attempting to wrest away its possession of the property.

In their comment,<sup>[12]</sup> the respondents maintain that the rule that "prohibition cannot lie against the implementation of a writ of possession"<sup>[13]</sup> was not absolute; and that the petition was infirm for raising mixed questions of fact and of law.

### **Ruling of the Court**

The petition is impressed with merit.

To resolve the issue of whether the CA correctly granted the injunctive writ to enjoin the implementation of the writ of possession the RTC had issued to place UCPB in the possession of the mortgaged property, it is necessary to explain the nature of the writ of possession and the consequences of its implementation.

A writ of possession commands the sheriff to place a person in possession of real property. It may be issued in the following instances, namely: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged property, and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage, pending redemption under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) execution sales, pursuant to the last paragraph of Section 33, Rule 39 of the *Rules of Court*.<sup>[14]</sup>

With particular reference to an extra-judicial foreclosure of a real estate mortgage under Act No. 3135, as amended by Act No. 4118, the purchaser at the foreclosure sale may apply *ex parte* with the RTC of the province or place where the property or any part of it is situated, to give the purchaser 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 should it be shown that the sale was made without violating the mortgage or without complying with the requirements of Act No. 3135; and the RTC, *upon approval of the bond*, order that a writ of possession be issued, addressed to the sheriff of the province in which the property is situated, who shall then execute said order *immediately*.<sup>[15]</sup> We underscore that the application for a writ of possession by the purchaser in a foreclosure sale conducted under Act No. 3135 is *ex parte* and summary in nature, brought for the benefit of one party only and without notice being sent by the court to any person adverse in interest. The relief is granted even without giving an opportunity to be heard to the person against whom the relief is sought.<sup>[16]</sup> Its nature as an *ex parte* petition under Act No. 3135, as amended, renders the application for the issuance of a *writ of possession* a non-litigious proceeding.<sup>[17]</sup> Indeed, the grant of the writ of possession is but a ministerial act on the part of the issuing court, because its issuance is a matter of right on the part of the purchaser.