

SECOND DIVISION

[G.R. No. 190078, March 05, 2010]

SPOUSES NORMAN K. CERTEZA, JR. AND MA. ROSANILA V. CERTEZA, AND AMADA P. VILLAMAYOR AND HERMINIO VILLAMAYOR, JR., PETITIONERS, VS. PHILIPPINE SAVINGS BANK, RESPONDENT.

R E S O L U T I O N

DEL CASTILLO, J.:

In this Petition for Review on *Certiorari*,^[1] petitioners contend that the auction sale conducted by virtue of the extrajudicial foreclosure of the mortgage should be declared null and void for failure to comply with the two-bidder rule.

Factual Antecedents

Petitioners obtained a P1,255,000.00 loan from respondent Philippine Savings Bank (PS Bank),^[2] secured by two parcels of land, with all the buildings and improvements existing thereon, covered by Transfer Certificate of Title Nos. N-208706 and N-208770.^[3]

Petitioners failed to pay their outstanding obligation despite demands hence PS Bank instituted on May 8, 2002, an action for Extrajudicial Foreclosure of the Real Estate Mortgage pursuant to Act No. 3135,^[4] as amended.

During the auction sale conducted on February 18, 2003, PS Bank emerged as the **sole and highest bidder**.^[5] A corresponding Certificate of Sale dated February 20, 2003 was issued in favor of PS Bank, which was registered with the Registry of Deeds of Quezon City on March 25, 2003.^[6]

During the period of redemption, on December 1, 2003, PS Bank filed an Ex-parte Petition^[7] for Writ of Possession with the Regional Trial Court (RTC) of Quezon City, which was granted in an Order^[8] dated September 21, 2004, after the period of redemption for the foreclosed property had already expired.

On January 20, 2005, petitioners filed an Omnibus Motion for Leave to Intervene and to Stay Issuance or Implementation of Writ of Possession,^[9] attaching therein their Petition-in-Intervention^[10] pursuant to Sec. 8 of Act No. 3135. They sought the nullification of the extrajudicial foreclosure sale for allegedly having been conducted in contravention of the procedural requirements prescribed in A.M. No. 99-10-05-0 (Re: Procedure in Extrajudicial Foreclosure of Real Estate Mortgages) and in violation of herein petitioners' right to due process.

PS Bank opposed^[11] the motion citing *Manalo v. Court of Appeals*^[12] where we held that "(T)he issuance of an order granting the writ of possession is in essence a rendition of judgment within the purview of Section 2, Rule 19 of the Rules of Court." PS Bank also argued that with the issuance of the trial court's Order on September 21, 2004, the Motion for Leave to Intervene can no longer be entertained.^[13]

The petitioners filed their Reply^[14] arguing that the filing of their petition before the court where possession was requested was pursuant to Sec. 8 of Act No. 3135.

Ruling of the Regional Trial Court

On March 3, 2005, the RTC of Quezon City, Branch 217, issued an Order^[15] denying the motion for intervention and to stay the implementation of the writ, to wit:^[16]

The issuance of writ of possession being ministerial in character, the implementation of such writ by the sheriff is likewise ministerial. In *PNB vs. Adil*, 118 SCRA 116 (1982), the Supreme Court held that "once the writ of possession has been issued, the trial court has no alternative but to enforce the writ without delay." The Court found it gross error for the judge to have suspended the implementation of the writ of possession on a very dubious ground as "humanitarian reason."

WHEREFORE, premises considered, the motion to intervene and to stay the implementation of the writ of possession is hereby denied.

Petitioners filed a motion for reconsideration^[17] but the motion was denied in the Order dated May 9, 2005.

Ruling of the Court of Appeals

Petitioners filed a Petition for *Certiorari* with the Court of Appeals (CA) on June 8, 2005 imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in denying their motion to intervene and to stay the implementation of the writ.^[18] The CA, in its Decision^[19] dated May 8, 2009, found that (1) the issuance of a writ of possession is a ministerial function; (2) there was no irregularity in the foreclosure sale; (3) the denial of the motion to intervene is proper; and (4) *certiorari* is not the proper remedy. The dispositive portion of the said Decision reads:^[20]

IN VIEW OF ALL THE FOREGOING, the petition is ordered DISMISSED. The Orders dated March 3, 2005 and May 9, 2005 in LR Case No. Q-17376 (03) are affirmed.

Petitioners filed a timely Motion for Reconsideration, which was denied by the CA in its Resolution dated October 20, 2009.^[21]

Hence, this petition.

Issues

Petitioners advance the following issues:

- I. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT CERTIORARI IS NOT THE PROPER REMEDY OF A PARTY IN A WRIT OF POSSESSION CASE.
- II. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THE DENIAL OF PETITIONERS' MOTION TO INTERVENE IS PROPER.
- III. WHETHER X X X THE COURT OF APPEALS ERRED IN RULING THAT THERE MAY BE ONLY ONE BIDDER IN A FORECLOSURE SALE.

Petitioners allege that the contents of their Omnibus Motion together with the Petition-in-Intervention, although entitled as such, sought the nullification of the February 18, 2003 extrajudicial foreclosure sale and the cancellation of both the certificate of sale and the writ of possession issued in favor of PS Bank.^[22] They further submit that the writ of possession is null and void because of patent irregularities in the conduct of the foreclosure sale.^[23] In support of their contention, petitioners argue that A.M. No. 99-10-05-0 which took effect on January 15, 2000, requires that there must be at least two participating bidders in an auction sale.^[24] Thus:

5. No auction sale shall be held unless there are at least two (2) participating bidders, otherwise the sale shall be postponed to another date. If on the new date set for the sale there shall not be at least two bidders, the sale shall then proceed. The names of the bidders shall be reported by the sheriff or the notary public who conducted the sale to the Clerk of Court before the issuance of the certificate of sale.

Our Ruling

The petition lacks merit.

The law governing cases of extrajudicial foreclosure of mortgage is Act No. 3135. It provides:

Section 1. When a sale is made under a special power inserted in or attached to any real estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

x x x x