

FIRST DIVISION

[G.R. No. 187556, May 05, 2010]

PLANTERS DEVELOPMENT BANK, PETITIONER, VS. JAMES NG AND ANTHONY NG, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

Assailed in the present petition for review on *certiorari* is the January 19, 2009 Decision^[1] of the Regional Trial Court of Quezon City (RTC-QC), Branch 77 in LRC Case No. Q-14305 (01) denying the motion of Planters Development Bank (petitioner) for the issuance of a writ of possession.

On various occasions in 1997, James Ng and his brother Anthony (respondents) obtained loans from petitioner amounting to Twenty Five Million Pesos (P25,000,000.00) to secure which they mortgaged two parcels of land situated in San Francisco del Monte, Quezon City and covered by Transfer Certificate of Title (TCT) Nos. 79865 and 79866 of the Registry of Deeds of Quezon City.

Respondents failed to settle their loan obligation, hence, petitioner instituted extrajudicial foreclosure of the mortgage before Notary Public Stephen Z. Taala.^[2] The Notice of Auction Sale scheduled the sale of the properties covered by the mortgage on April 7, 1999 at the Main Entrance of the Hall of Justice Building in Quezon City.^[3] The Notice was published in Metro Profile, a newspaper of general circulation, in its March 9, 16 and 23, 1999 issues.^[4]

The highest bidder at the auction sale was petitioner to which was issued a Certificate of Sale that was registered with the Register of Deeds of Quezon City on May 19, 1999.^[5]

As respondents failed to redeem the mortgage within one year, petitioner filed on June 26, 2001, an *ex-parte* petition for the issuance of a writ of possession, docketed as LRC Case No. Q-14305 (01) and lodged before RTC-QC, Branch 77.

In the meantime, respondents instituted an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage, raffled to RTC-QC, Branch 221 which, by Order of June 14, 2000,^[6] issued a writ of preliminary injunction restraining petitioner from consolidating its title to the properties and committing any act of dispossession that would defeat respondents' right of ownership.

After numerous incidents arising from petitioner's petition for issuance of a writ of possession and respondents' complaint for annulment which incidents reached this Court, petitioner was finally allowed by Branch 77 of the RTC-QC, by Order of August 22, 2008, to present evidence *ex parte* on its petition for the issuance of a

writ of possession.

By Decision of January 19, 2009, RTC-QC, Branch 77 denied the issuance of a writ of possession in this wise.

. . . [P]etitioner was unable to prove that it complied with Sections 3 and 4 of Act 3135, as amended. Particularly, there is no proof of notice of sale made for not less than twenty (20) days in at least three (3) public places. There is also no proof that Notary Public Atty. Stephen Z. Taala, who conducted the sale at public action of the subject properties, collected filing fees and issued the corresponding official receipt, in addition to his expenses. The Petition for Extra-Judicial Foreclosure of Mortgage, dated February 25, 1999 (Exhibit "D") was filed directly with the Notary Public Atty. Stephen Z. Taala and not with the Executive Judge, through the Clerk of Court, who is also the Ex-Officio Sheriff. The Certificate of Sale, dated May 19, 1999 (Exhibit "F"), was not approved by the Executive Judge, or in his absence, the Vice-Executive Judge."^[7]
(underscoring supplied)

Petitioner's motion for reconsideration of the decision having been denied by Order of April 20, 2009,^[8] it filed, before this Court, the present petition for review on *certiorari* on pure questions of law, in accordance with Rule 45 of the Rules of Court.

Petitioner, in the main, asseverates that Branch 77 of the RTC-QC cannot cite as ground for denial of the issuance of a writ of possession questions relating the validity of the mortgage or its foreclosure.

Respondents counter that there are no facts or the facts are insufficient to entitle petitioner to a writ of possession.

The petition is meritorious.

It is settled that questions regarding the validity of a mortgage or its foreclosure as well as the sale of the property covered by the mortgage cannot be raised as ground to deny the issuance of a writ of possession. Any such questions must be determined in a subsequent proceeding^[9] as in fact, herein respondents commenced an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage.

Parenthetically, the court *a quo* denied the issuance of the writ as it credited respondents' opposition to petitioner's petition for the issuance of a writ of possession, which opposition it synthesized as follows:

On the other hand, the mortgagors[-respondents herein] contend that the extrajudicial foreclosure proceedings conducted by the Notary Public over the mortgaged properties of the mortgagors suffered jurisdictional infirmities; that the jurisdictional infirmities consisted of the fact that the requirement of posting the notices of the sale for not less that twenty (20) days in at least three (3) public places in the city where the property