

## SECOND DIVISION

[ G.R. No. 168672, August 08, 2010 ]

**EQUITABLE PCI BANK, INC., PETITIONER, VS. DNG REALTY AND DEVELOPMENT CORPORATION, RESPONDENT.**

### DECISION

**PERALTA, J.:**

Before us is a petition for review on *certiorari* with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction filed by petitioner Equitable PCI Bank, Inc., seeking to set aside the June 23, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 86950.

The undisputed facts, as found by the CA, are as follows:

(Respondent) DNG Realty and Development Corporation (DNG) obtained a loan of P20M from x x x Equitable PCI Bank (EPCIB) secured by a real estate mortgage over the 63,380 sq. meter land of the former situated in Cabanatuan City. Due to the Asian Economic Crisis, DNG experienced liquidity problems disenabling DNG from paying its loan on time. For this reason, EPCIB sought the extrajudicial foreclosure of the said mortgage by filing a petition for sale on 30 June 2003 before the Office of the *Ex-Officio* Sheriff. On 4 September 2003, the mortgage property was sold at public auction, which was eventually awarded to EPCIB as the highest bidder. That same day, the Sheriff executed a Certificate of Sale in favor of EPCIB.

On October 21, 2003, DNG filed a petition for rehabilitation under Rule 4 of the Interim Rules of Procedure on Corporate Rehabilitation before the Regional Trial Court, Branch 28, docketed as Special Proceeding No. 125. Pursuant to this, a Stay Order was issued by RTC Branch 28 on 27 October 2003. The petition for rehabilitation was then published in a newspaper of general circulation on 19 and 26 November 2003.

On the other hand, EPCIB caused the recording of the Sheriff's Certificate of Sale on 3 December 2003 with the Registry of Deeds of Cabanatuan City. EPCIB executed an Affidavit of Consolidation of Ownership and had the same annotated on the title of DNG (TCT No. 57143). Consequently, the Register of Deeds cancelled DNG's title and issued TCT No. T-109482 in the name of EPCIB on 10 December 2003. This prompted DNG to file Civil Case No. 4631 with RTC-Br. 28 for annulment of the foreclosure proceeding before the Office of the *Ex-Officio* Sheriff. This case was dismissed for failure to prosecute.

In order to gain possession of the foreclosed property, EPCIB on 17 March 2004 filed an Ex-Parte Petition for Issuance of Writ of Possession docketed as Cadastral Case No. 2414-AF before RTC Br. 23 in Cabanatuan City. After hearing, RTC-Br. 23 on 6 September 2004 issued an order directing the issuance of a writ of possession. On 4 October 2004, RTC-Br. 23 issued the Writ of Possession. Consequently, the Office of the *Ex-Officio* Sheriff issued the Notice to Vacate dated 6 October 2004.<sup>[2]</sup>

On October 15, 2004, respondent filed with the CA a petition for *certiorari*, prohibition and mandamus with prayer for the issuance of temporary restraining order/ preliminary injunction entitled *DNG Realty and Development Corporation v. Hon. LYDIA BAUTO HIPOLITO, in her capacity as the Presiding Judge of Branch 23, Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE EX-OFFICIO SHERIFF of the Regional Trial Court, Third Judicial Region, Cabanatuan City; the OFFICE OF THE REGISTER OF DEEDS OF CABANATUAN CITY; and EQUITABLE PCIBANK, INC.* The petition for *certiorari* sought to nullify (1) the affidavit of consolidation of ownership dated December 2, 2003; (2) the cancellation of DNG's TCT No. T-57143 covering the mortgaged property and the issuance of TCT No. T-109482 in favor of petitioner EPCIB by the Register of Deeds of Cabanatuan City; (3) the Order dated September 6, 2004 issued by the RTC, Branch 23, directing the issuance of the writ of possession and the writ of possession issued pursuant thereto; and (4) the sheriff's Notice to Vacate dated October 6, 2004, while the petition for prohibition sought to enjoin petitioner EPCIB, their agents and representatives from enforcing and implementing the above-mentioned actions. And the petition for mandamus sought to require petitioner EPCIB to cease and desist from taking further action both in the foreclosure proceedings as well as in Cadastral Case No. 2414-AF, where the writ of possession was issued until the petition for rehabilitation pending before Branch 28 of the Regional Trial Court (RTC) of Cabanatuan City has been terminated or dismissed.

On October 22, 2004, the CA issued a temporary restraining order (TRO).<sup>[3]</sup>

After the parties filed their respective pleadings, the CA issued its assailed Decision, the dispositive portion of which reads:

WHEREFORE, the instant petition is GRANTED. The Order of 6 September 2004 directing the issuance of a writ of possession; the Writ of Possession issued pursuant thereto; and the Notice to Vacate are all REVERSED and SET ASIDE for being premature and untimely issued. Lastly, the Transfer Certificate of Title No. T-109482 under the name of Equitable PCI Bank is hereby ordered CANCELLED for equally being issued prematurely and untimely, and in lieu thereof the Transfer Certificate of Title No. 57143 is ordered REINSTATED. <sup>[4]</sup>

In finding the petition meritorious, the CA stated that under A.M. No. 00-8-10-SC adopting the Interim Rules of Procedure on Corporate Rehabilitation, all petitions for rehabilitation by corporations, partnerships and associations under Presidential Decree (PD) 902-A, as amended by Republic Act (RA) 8799, were directed to be

transferred from the Securities and Exchange Commission (SEC) to the RTCs, and allowed the RTCs to issue a stay order, *i.e.*, staying enforcements of all claims, whether for money or otherwise, and whether such enforcement is by court action or otherwise, against the debtor. And under Section 6 (c) of PD 902-A, the Commission (now the RTC) upon appointment of a management committee, rehabilitation receiver, board or body, all actions or claims against the corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly. The CA, relying in *Bank of the Philippine Islands v. Court of Appeals (BPI v. CA)*<sup>[5]</sup> found no merit to petitioner EPCIB's claim that the foreclosure sale of the property was made prior to the issuance of the Stay Order and was, therefore, *fait accompli*; and that with the consummation of the extrajudicial foreclosure sale, all the valid and legal consequences of such could no longer be stayed. The CA ruled that after the issuance of the Stay Order, effective from the date of its issuance, all subsequent actions pertaining to respondent DNG's Cabanatuan property should have been held in abeyance. Petitioner EPCIB should have refrained from executing its Affidavit of Consolidation of ownership or filing its *ex-parte* petition for issuance of a writ of possession before the RTC Branch 23; respondent Office of the Register of Deeds of Cabanatuan City should not have cancelled respondent DNG's title and issued a new one in petitioner EPCIB's name; and that respondent Judge and the *Ex-Officio* Sheriff should have abstained from issuing the writ of possession and the notice to vacate, respectively.

The CA found no forum shopping committed by respondent DNG as Civil Case No. 4631 filed before Branch 28 sought to annul the foreclosure sale and the certificate of sale over respondent DNG's property, while Cadastral Case No. 2414-AF instituted by petitioner EPCIB, was an *ex-parte* petition to wrest possession of the same property from respondent DNG. On the other hand, the present petition sought only to stay all proceedings on respondent DNG's property after the Stay Order was issued. Thus, the causes of action and the reliefs sought in each of those proceedings were not identical.

The CA also found that, despite the Stay Order issued, petitioner EPCIB's over-zealousness in consolidating its title and taking possession of the respondent's property left the latter without any plain, speedy and adequate remedy but to file the petition.

Dissatisfied, petitioner EPCIB filed the instant petition where it raises the errors committed by the CA as follows:

THE COURT OF APPEALS COMMITTED GRAVE, PALPABLE, AND REVERSIBLE ERRORS IN TAKING COGNIZANCE OF AN ORIGINAL PETITION FOR CERTIORARI, PROHIBITION AND MANDAMUS, AND IN ISSUING A TEMPORARY RESTRAINING ORDER, AGAINST THE MINISTERIAL IMPLEMENTATION OF A WRIT OF POSSESSION.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE 1994 CASE OF BPI VS. CA IS SQUARELY IN POINT IN THE PRESENT CONTROVERSY.

THE COURT OF APPEALS GRAVELY AND SERIOUSLY ERRED IN HOLDING

THAT SINCE THE CONSOLIDATION OF TITLE, THE APPLICATION FOR THE ISSUANCE OF A WRIT OF POSSESSION, THE CANCELLATION OF RESPONDENT'S TITLE AND THE ISSUANCE OF A NEW ONE UNDER EPCIBANKS'S NAME, THE ISSUANCE OF THE WRIT OF POSSESSION, AND THE SERVICE OF A NOTICE TO VACATE HAVE BEEN MADE AFTER THE ISSUANCE OF THE STAY ORDER, THE SAME WERE UNTIMELY AND PREMATURE.

THE COURT OF APPEALS COMMITTED A GRAVE, PALPABLE AND REVERSIBLE ERROR IN HOLDING THAT THE RESPONDENT HAD NO OTHER PLAIN, SPEEDY AND ADEQUATE REMEDY.<sup>[6]</sup>

Petitioner contends that upon failure to redeem the foreclosed property, consolidation of title becomes a matter of right on the part of the auction buyer, and the issuance of a certificate of title in favor of the purchaser becomes ministerial upon the Register of Deeds; that the issuance and implementation of a writ of possession are both ministerial in character, thus, a writ of *certiorari*, prohibition and mandamus which respondent DNG filed with the CA and which were all directed to address the abuse of discretion allegedly committed by the cadastral court and the sheriff will not lie; and that the CA erred in finding grave abuse of discretion or excess of jurisdiction upon the cadastral court which issued the writ of possession and the sheriff who implemented the same, as they acted in compliance with the express provision of Act 3135 as amended.

Petitioner claims that the CA's reliance in *BPI v. CA* in ruling that all subsequent actions pertaining to respondent DNG's Cabanatuan property, *i.e.*, consolidation of ownership, cancellation of respondent's title and the issuance of a new title in petitioner's name and the issuance of a writ of possession by Branch 23 of the RTC in Cadastral Case No. 2414-F, and the notice to vacate, which were all made after the issuance of the Stay Order by the rehabilitation court, should have been held in abeyance is erroneous. Petitioner EPCIB cites the case of *Rizal Commercial Banking Corporation v. Intermediate Appellate Court (RCBC v. IAC)*<sup>[7]</sup> as the applicable jurisprudence in this case. Petitioner argues that since the extrajudicial foreclosure sale of respondent DNG's property was conducted on September 4, 2003, or prior to the filing of the petition for rehabilitation on October 21, 2003 and the issuance of the Stay Order on October 27, 2003, the enforcement of a creditor claim via an extrajudicial foreclosure sale conducted on September 4, 2003 could no longer be stayed for having been fully consummated prior to the issuance of the Stay Order.

Petitioner argues that the CA erred in its finding that there was no other plain, speedy and adequate remedy available to respondent but to file the petition for *certiorari*, prohibition and mandamus with the CA, since Section 8 of Act 3135 provides for the proper remedy against an order granting the issuance of a writ of possession.

In its Comment, respondent echoed the findings made by the CA. Petitioner filed its Reply.

The issues for resolution are (1) whether respondent DNG's *petition for certiorari, prohibition and mandamus* filed in the CA was a proper remedy; (2) whether the CA correctly held that all subsequent actions pertaining to respondent DNG's

Cabanatuan property should have been held in abeyance after the Stay Order was issued by the rehabilitation court.

We answer both issues in the negative.

Anent the first issue, respondent DNG filed before the CA a *petition for certiorari, prohibition and mandamus* with prayer for the issuance of a TRO and a writ of preliminary injunction seeking to annul the RTC Order dated September 6, 2004 issued in Cadastral Case No. 2414-AF, *i.e.*, in re *ex-parte* petition filed by petitioner EPCIB for the issuance of a writ of possession, which ordered the issuance of the writ of possession in petitioner EPCIB's favor as the new registered owner of the property covered by TCT No. T-109482. We find that the CA erred in acting on the petition. Act 3135, as amended by Act 4118, which regulates the methods of effecting an extrajudicial foreclosure of mortgage explicitly authorizes the issuance of such writ of possession.<sup>[8]</sup> Section 7 of Act 3135 as amended provides:

Section 7. *Possession during redemption period.* - In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] 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 the form of 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 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.

Section 7 of Act 3135, as amended, refers to a situation wherein the purchaser seeks possession of the foreclosed property during the redemption period. 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.<sup>[9]</sup> But equally well settled is the rule that a writ of possession will issue as a matter of course, even without the filing and approval of a bond, after consolidation of ownership and the issuance of a new TCT in the name of the purchaser.<sup>[10]</sup> Thus, if under Section 7 of Act 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 had already been issued in the name of the purchaser.<sup>[11]</sup> Thus, after the