

FIRST DIVISION

[G.R. No. 162103, June 19, 2009]

**MARYLOU B. TOLENTINO, M.D., PETITIONER, VS. SHENTON
REALTY CORP., RESPONDENT.**

DECISION

CARPIO, J.:

The Case

This is a petition for review^[1] of the Resolution dated 28 October 2003 and the Order dated 29 January 2004 of the Regional Trial Court of Mandaluyong City, Branch 213, in LRC Case No. MC-03-237.

The Facts

On 27 November 1996, petitioner obtained a P3,700,000 loan from the Bank of Southeast Asia, secured by a real estate mortgage over petitioner's property (property) covered by TCT No. 11637.^[2] Upon petitioner's default in the payment of her obligation, the bank instituted extra-judicial foreclosure of real estate mortgage under Act 3135,^[3] as amended by Act 4118.^[4] During the public auction on 24 September 1999, the property was sold for P3,958,539.92 to respondent as the highest bidder. On 5 October 1999, respondent was issued a Certificate of Sale, which was annotated on the transfer certificate of title (TCT No. 11637) on 7 February 2001.

Meanwhile, on 6 February 2002, petitioner filed with the Regional Trial Court of Mandaluyong City, Branch 212, Civil Case No. MC-02-1736^[5] against Bank of Southeast Asia (now merged with BPI Family Bank), Atty. Jimmy D. Lacebal, and the Register of Deeds of Mandaluyong City for Judicial Redemption, Equity on Accounting, Damages with Prayer for a Temporary Restraining Order or a Writ of Preliminary Injunction. Petitioner subsequently amended her complaint to implead respondent and BPI Family Bank.^[6]

On 18 November 2002, respondent executed an Affidavit of Consolidation of Ownership.^[7] Respondent then filed an Ex-Parte Motion for Issuance of Writ of Possession on 10 March 2003. LRC Case No. MC-03-237 was raffled to the Regional Trial Court of Mandaluyong City, Branch 213 (trial court).

On 3 June 2003, petitioner filed with the trial court a Motion with Leave to Intervene. In a Resolution dated 28 October 2003, the trial court denied the motion for lack of merit, holding that:

This Court holds that intervention is not proper when there is no pending litigation. x x x [I]ntervention contemplates a suit, and is therefore, exercisable during a trial and, is one which envisions the introduction of evidence by the parties, leading to the rendition of the decision in the case. This concept is not contemplated by section 7 of Act 3135, whereby under settled jurisprudence, the judge has to order the immediate issuance of a writ of possession (1) upon the filing of the proper motion and (2) the approval of the corresponding bond. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership. A trial which entails delay is obviously out of the question.

x x x

Therefore, the order for a writ of possession issues as a matter of course upon the filing of the proper motion, no discretion is left to the court and any question regarding the equity in accounting (and subsequent cancellation of the writ) is left to be determined in a separate action x x x.^[8]

Petitioner filed a motion for reconsideration, which the trial court denied in its Order dated 29 January 2004. The trial court also ordered the issuance of the writ of possession.

On 2 March 2004, petitioner filed this petition for review. Meanwhile, the trial court, acting on the ex-parte manifestation of respondent praying for immediate possession of the property, issued an Order^[9] dated 19 May 2004 directing the immediate issuance of a writ of possession. On 24 May 2004, the writ of possession was issued commanding the trial court Sheriff to place respondent in possession of the property.

On 26 May 2004, petitioner filed a motion for the issuance of a temporary restraining order or writ of preliminary injunction. In a Resolution^[10] dated 31 May 2004, the Court issued a temporary restraining order enjoining the trial court from implementing the Order dated 19 May 2004 in LRC Case No. MC-03-237, upon petitioner's filing of a bond in the amount of P20,000. Upon receipt of the Court's Resolution, petitioner posted the P20,000 cash bond on 7 June 2004.^[11] On 14 June 2004, the Court approved the bond and issued the temporary restraining order.^[12]

However, it appears that on 2 June 2004, the Sheriff already conducted an inventory and turned over the property to respondent. In his comment,^[13] the Sheriff stated that the trial court received a copy of the Court's Resolution dated 31 May 2004 only on 3 June 2004, a day after the writ of possession was implemented.

The Issue

Petitioner alleges that the trial court erred in issuing the writ of possession despite the defective ex-parte motion for issuance of writ of possession and the lack of bond as mandated under Act 3135.

The Ruling of the Court

We find the petition without merit.

***Authority of Corporate Officer to File the Petition for
Writ of Possession***

Petitioner alleges that Virgilio Sintos, Jr., who signed the verification for the Ex-Parte Motion for Issuance of Writ of Possession, failed to show that he was duly authorized to represent respondent. Virgilio Sintos, Jr. was the Assistant Vice President of BPI Family Savings Bank, Inc. and the Attorney-in-Fact of respondent. Respondent claims that Virgilio Sintos, Jr. was duly authorized by the board of directors as shown by the Secretary's Certificate^[14] dated 25 November 2002, which respondent attached to its memorandum submitted to the Court.

The corporate powers of a corporation, including the power to sue and be sued in its corporate name, are exercised by the board of directors.^[15] The physical acts of the corporation, like the signing of documents such as verification and certification of non-forum shopping, can only be performed by natural persons duly authorized for the purpose by corporate by-laws or by a specific act of the board of directors.^[16]

In this case, although Virgilio Sintos, Jr. initially failed to show that he was authorized to sign the verification for the Ex-Parte Motion for Issuance of Writ of Possession, respondent submitted a Secretary's Certificate to the Court confirming that Virgilio Sintos, Jr. was indeed authorized by the board of directors. In the interest of justice, the Court may allow the relaxation of procedural rules where there is subsequent substantial compliance.^[17]

***Judicial Redemption Without Consignation
of Redemption Price***

In extrajudicial foreclosures, the requisites for a valid redemption are provided under Section 6 of Act 3135, as amended, thus:

SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure [now Rule 39, Section 28 of the 1997 Rules of Civil Procedure], in so far as as these are not inconsistent with the provisions of this Act.

Section 28, Rule 39 of the 1997 Rules of Civil Procedure provides:

SEC. 28. *Time and manner of, and amounts payable on, successive redemptions; notice to be given and filed.* - **The judgment obligor, or redemptioner, may redeem the property from the purchaser, at any time within one (1) year from the date of the registration of the certificate of sale, by paying the purchaser the amount of his**