

THIRD DIVISION

[G.R. No. 178881, February 18, 2008]

SPOUSES ALEX and JULIE LAM, Petitioners, vs. METROPOLITAN BANK AND TRUST COMPANY, Respondent.

RESOLUTION

NACHURA, J.:

This Petition for Review on *Certiorari* assails the October 10, 2006 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 00088, and the July 11, 2007 Resolution^[2] denying the motion for its reconsideration.

Petitioners Alexander and Julie Lam obtained a loan of P2,000,000.00 from the respondent Metropolitan Bank & Trust Company. To secure its payment, petitioners executed a deed of real estate mortgage^[3] over their property in Davao City, covered by TCT No. T-115893. Petitioners were subsequently granted additional loans and signed several amendments to the real estate mortgage.^[4]

Petitioners, however, failed to pay the loans; hence, respondent instituted an extrajudicial foreclosure proceeding with the Office of the Clerk of Court and the *Ex-Officio* Sheriff of Davao, which was granted by the latter. A sheriff's sale was held and the property was awarded to the respondent as the sole bidder. A Provisional Certificate of Sale^[5] was issued in favor of the respondent on May 20, 1998, and it was registered with the Registry of Deeds on July 7, 1998.^[6]

Petitioners failed to redeem the property within the one-year redemption period. Accordingly, a Final Certificate of Sale in favor of the respondent was executed by the Sheriff on October 1, 1999.^[7] Respondent consolidated its title to the subject property; thus, TCT No. T-115893 in the name of petitioners was cancelled and TCT No. T-327605^[8] in the name of respondent was issued.

Respondent demanded that petitioners turn over actual possession of the subject property,^[9] but the latter failed and refused to do so. This prompted respondent to file a Complaint^[10] for the issuance of a writ of possession with the Regional Trial Court (RTC) of Davao City, with the case docketed as Other Case No. 097-2001, and raffled to Branch 13.

Summons and notice of hearing were then sent to petitioners, who filed their answer denying the material allegations in the complaint. They averred that respondent's complaint was fatally defective for it did not allege its capacity to sue and be sued. Likewise, there was no showing that the officer who signed the verification and certification was duly authorized to represent the respondent. Petitioners also denied that they obtained the P3,900,000.00 loan.

During the pre-trial conference, the RTC directed the parties to proceed to mediation. The parties, however, failed to arrive at an amicable settlement; hence, the case was referred back to the RTC for the continuation of the pre-trial conference.

At the pre-trial conference on October 15, 2003, respondent manifested and moved that the complaint for writ of possession should be heard ex parte. The RTC then directed the parties to submit their respective memoranda on this issue.

On January 16, 2004, the RTC resolved respondent's motion in this wise:

It would appear from the caption of this case that this case should be treated as an adversarial proceeding. In fact, the court itself issued summons and copy of the complaint to defendants, and directed them to file their Answer (which they did) to the complaint.

However, this case, as correctly noted by plaintiff (petitioner) is not an ordinary civil case, and it should not be treated as such. To determine how this case should be treated, we can only be guided by the rulings of the Supreme Court on the matter.

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It is clear from the law and jurisprudence that this case should be treated as an ex parte proceeding and not an adversarial one. Such being the case, the defendant/respondent should not be allowed to participate in this case as an adverse party as if the same is an ordinary civil action.

According to the Supreme Court, any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ is to be determined not in this proceeding for issuance of a writ of possession, but in subsequent proceedings as outlined in Section 8 of Act. 3135.

WHEREFORE, in view of the foregoing, the court rules that the proceeding in case is ex parte, and not adversarial. As such, defendant shall not be allowed to participate in the hearing of this case. The pre-trial conference set on March 15, 2004, is hereby converted into the reception of plaintiff/petitioner's evidence ex-parte.

SO ORDERED.^[11]

On January 23, 2004, petitioners filed a complaint for specific performance and annulment of foreclosure of mortgage with the RTC. The case was docketed as Civil Case No. 30,216-2004, and, likewise, raffled to Branch 13.

Subsequently, on February 11, 2004, petitioners filed a motion for reconsideration of the January 16, 2004 Order issued in Other Case No. 097-2001.

On July 19, 2004, the RTC granted petitioners' motion for reconsideration. In reversing its earlier Order and allowing petitioners to participate in the proceedings,

the RTC declared that respondent was estopped from demanding a resolution *ex parte*, after allowing petitioners to participate in the proceedings. The RTC added that "under equitable circumstances," the duty of the court to issue a writ of possession ceased to be ministerial, and the existence of these "equitable circumstances" can only be determined in adversarial proceedings. The respondent filed a motion for reconsideration, but the RTC denied it.

Respondent went to the CA on certiorari. On October 10, 2006, the CA rendered the assailed Decision, granting respondent's petition for certiorari. Reversing the RTC, the CA declared that the RTC abused its discretion in declaring Other Case No. 097-2001 an adversarial proceeding. According to the CA, law and jurisprudence are explicit that a petition for the issuance of a writ of possession is *ex parte* and not adversarial. It was, therefore, plain and patent error for the RTC to issue orders contravening this basic and well-entrenched legal principle. The CA also declared that the RTC mistakenly opined that it was prudent to consolidate Other Case No. 097-2001 with the civil case for annulment of the foreclosure sale. According to the CA, the rule on the consolidation of actions in a civil procedure covers only "civil actions," and an *ex parte* petition for the issuance of a writ of possession under Section 7 of Act No. 3135, is not a civil action; thus, it cannot be consolidated with the case for annulment of mortgage. It further held that any question regarding the validity of the mortgage or its foreclosure cannot be a legal ground for refusing the issuance of a writ of possession.

Petitioners filed a motion for reconsideration, but the CA denied it on July 11, 2007.

Forthwith, petitioners elevated the case to this Court and in support of their petition allege that:

I

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE HONORABLE REGIONAL TRIAL COURT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE ORDERS DATED 19 JULY 2004 AND 04 OCTOBER 2004 CONSIDERING [THAT] THE LATTER MERELY APPLIED PREVAILING JURISPRUDENCE RECOGNIZING EXCEPTIONS TO THE GENERAL RULE THAT THE PROCEEDINGS FOR THE ISSUANCE OF A WRIT OF POSSESSION IS EX-PARTE AND NOT ADVERSARIAL.

II

THE HONORABLE COURT OF APPEALS ERRED IN DISREGARDING THE EQUITABLE CONSIDERATIONS EXISTING IN THIS CASE THAT WARRANT THE APPLICATION OF THE EXCEPTIONS TO THE GENERAL RULE THAT THE PROCEEDINGS FOR THE ISSUANCE OF A WRIT OF POSSESSION IS EX-PARTE AND NOT ADVERSARIAL.^[12]

The petition is without merit.

It is settled that the issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, entitlement to the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial