

THIRD DIVISION

[G.R. No. 156421, April 14, 2008]

HON. JOSE FERNADEZ, RTC OF PASIG CITY, BR. 158 AND UNITED OVERSEAS BANK PHILS., PETITIONERS, VS. SPS. GREGORIO ESPINOZA AND JOJI GADOR-ESPINOZA, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner United Overseas Bank^[1] (UOB) seeking to reverse and set aside the Decision^[2] of the Court of Appeals dated 25 June 2002 and its Resolution^[3] dated 28 November 2002 in CA-G.R. SP No. 60865. The assailed Decision of the Court of Appeals reversed the Orders^[4] dated 10 May 2000, 10 July 2000, 13 July 2000 and 25 August 2000 of the Regional Trial Court (RTC) of Pasig City, Branch 158, in LRC Case No. R-5792.

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, premises considered the assailed Orders dated May 10, 2000, July 10, 2000, July 13, 2000 and August 25, 2000 are hereby ANNULLED and SET ASIDE. LRC Case No. R-5792 is hereby ordered to be consolidated with Civil Case No. 66256 of Branch 164 of the Regional Trial Court of Pasig City. No Costs.^[5]

The 10 May 2000 and 10 July 2000 Orders of the RTC denied the motion filed by respondent spouses Gregorio Espinoza and Joji Gador-Espinoza (spouses Espinoza) for the consolidation of the *Ex-Parte* Petition for the Issuance of Writ of Possession filed by UOB, docketed as LRC Case No. R-5792, with their Complaint for Nullification of Extrajudicial Proceedings and Certificate of Sale, docketed as Civil Case No. 66256, pending with the RTC, Branch 164. The 13 July 2000 and 25 August 2000 Orders of the RTC granted the Petition of UOB in LRC Case No. R-5792, and ordered the issuance of a writ of possession in favor of UOB over the real property covered by Transfer Certificate of Title (TCT) No. PT-108565.

UOB is a banking institution duly organized and existing as such under the Philippine laws; while Firematic Philippines, Inc. (FPI) is a domestic corporation duly organized and existing under Philippine laws represented by its President, Gregorio Espinoza.

On 24 March 1996, FPI was granted a revolving credit line by UOB in the amount of P11,000,000.00. Using the said credit line, FPI obtained on several occasions from UOB loans in different amounts, reaching the total sum of P4,000,000.00, as evidenced by promissory notes executed by Gregorio Espinoza. Likewise drawn against the credit line of FPI were trust receipts in the sum of P6,325,588.71.

As a security for the loan obligations of FPI, the spouses Espinoza executed a Deed of Real Estate Mortgage over a parcel of land located in Pasig City, with an area of 200 square meters, and covered by TCT No. PT-84838 in their names, with an area of 200 square meters and registered by the Registry of Deeds of Pasig City (subject property).^[6]

Subsequently, FPI defaulted in the payment of the promissory notes and trust receipts drawn against its credit line, which prompted UOB to cause the extrajudicial foreclosure of its mortgage on the subject property, and the public auction sale thereof. The UOB was the highest bidder at the auction sale as evidenced by the Certificate of Sale^[7] dated 29 July 1996.

For failure of FPI and the spouses Espinoza to redeem the subject property within the redemption period, UOB filed an Affidavit of Consolidation before the Register of Deeds of Pasig. Consequently, a new TCT covering the subject property was issued in the name of UOB, particularly, TCT No. PT-108565.

In order to retain possession of the subject property, FPI and the spouses Espinoza instituted an action for nullification of the extrajudicial foreclosure proceedings and certificate of sale, before the RTC, Branch 164, docketed as **Civil Case No. 66256**. In their Amended Complaint, FPI and the spouses Espinoza alleged that there was bad faith on the part of UOB who made them sign the Deed of Real Estate Mortgage in blank. In addition, FPI and the spouses Espinoza averred that there was already an agreement entered into by the parties to restructure the loan, but for unknown reasons, the agreement was unilaterally rescinded by UOB. Finally, FPI and the spouses Espinoza claimed that at the time they filed their complaint, FPI already paid UOB the sum of P5,275,012.43. Despite their repeated requests, however, UOB still failed to give them proper accounting of their outstanding loan obligations and the payments they made thereon.

For its part, UOB filed an *Ex-Parte* Petition for Issuance of a Writ of Possession before the RTC, Branch 158, docketed as **LRC Case No. R-5792**. The spouses Espinoza opposed LRC Case No. R-5792 in view of the pendency of Civil Case No. 66256 and moved, instead, for the consolidation of the two cases

In its Order dated 10 May 2000, the RTC, Branch 158, in LRC Case No. R-5792, denied the opposition to the Petition and the motion for consolidation interposed by the spouses Espinoza, to wit:

This resolves the opposition to the *ex-parte* issuance of writ of possession with motion for consolidation together with the reply to the opposition and the opposition to the motion.

Since [UOB] has already consolidated a title in its name, the pendency of separate civil action is not a bar to the issuance of writ of possession because the same is a ministerial act of the trial court (*Vaca v. Court of Appeals, et. al.*, G.R. No. 1109672, July 14, 1994). Being so, the proceedings of this petition is *ex-parte* that does not require the appearance nor the intervention of the [spouses Espinoza].

Consequently, [the spouses Espinoza's] opposition to the issuance of writ of possession and its motion for consolidation are denied.^[8]

The Motion for Reconsideration of the afore-quoted 10 May 2000 Order filed by the spouses Espinoza was denied by the RTC, Branch 158, in its subsequent Order dated 10 July 2000, which reads:

This resolves [the spouses Espinoza's] Motion for Reconsideration, Addendum to Motion for Reconsideration together with the opposition to the motion.

The motion is denied. It is merely a reiteration of their earlier opposition to their *Ex-parte* Petition for Issuance of Writ of Possession.^[9]

On 13 July 2000, another Order was issued by the RTC, Branch 158, in LRC Case No. R-5792 granting UOB's *Ex-Parte* Petition for the Issuance of Writ of Possession over the subject property. The lower court decreed that UOB became the absolute owner of the subject property being the highest bidder in the public auction sale, and since the spouses Espinoza failed to redeem the subject property within one year from the registration of the certificate of sale, UOB is now entitled to possession of the same as the confirmed owner. According to the decretal portion of RTC Order:

WHEREFORE, let a writ of possession be issued in favor of petitioner United Overseas Bank Phils., directing the spouses Gregorio Espinoza and Joji Gador-Espinoza and all persons claiming rights under them to vacate the premises of the property covered by Transfer Certificate of Title No. PT-108565 under [UOB's] name and to turn to it over [UOB] within ten (10) days from receipt of this Order.^[10]

A motion was filed by the spouses Espinoza seeking reconsideration and clarification of the 13 July 2000 Order of the RTC, Branch 158, underscoring the alleged irregularities in the procurement of the mortgage, accounting of the loan obligations, and conduct of the foreclosure proceedings.

The Motion for Clarification of the spouses Espinoza, however, was denied by the RTC, Branch 158, in its Order dated 25 August 2000, which states:

The motion is denied. There is really nothing to clarify on the Order of this Court dated July 13, 2000. It is an Order for the issuance of a writ of possession over a property covered by Transfer Certificate of Title No. PT-108565 formerly Transfer Certificate of Title No. PT-84838. It is an Order directing Spouses Gregorio Espinoza and Joji Gador-Espinoza and all persons claiming rights under them to vacate the premises and turn it over to [UOB].

Consequently, this Order of July 13, 2000 stays and the motion of the [the spouses Espinoza] for the consolidation of its (sic) petition with Civil Case No. 66256 pending before Branch 164, also of this Court is denied.

^[11]

Dissatisfied, the spouses Espinoza filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, docketed as CA-G.R. SP No. 60865,

averring that the foregoing RTC Orders were issued by the RTC in grave abuse of discretion and, thus, must be nullified and set aside.

On 25 March 2002, the Court of Appeals rendered a Decision in favor of the spouses Espinoza and reversed the four RTC Orders. The appellate court stressed that the duty of the trial court to issue the writ of possession after the expiration of the one-year redemption period ceased to be ministerial in view of the pressing peculiar and equitable circumstances in the instant case.

In a Resolution dated 28 November 2002, the Court of Appeals denied UOB's Motion for Reconsideration of its Decision.

Petitioner is now before this Court assailing the 25 March 2002 Decision and 28 November 2002 Resolution of the Court of Appeals *via* a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, raising the following issues:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN GIVING DUE COURSE TO THE SPOUSES ESPINOZA'S PETITION.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED GROSS AND REVERSIBLE ERROR IN NOT DECLARING THAT [UOB] IS ENTITLED TO THE ISSUANCE OF THE WRIT OF POSSESSION

At the outset, it must be emphasized that what is on appeal before us is only the issuance of the writ of possession over the subject property issued by the RTC, Branch 158, in LRC Case No. R-5792.

A writ of possession is an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued under the following instances: (1) land registration proceedings under Sec. 17 of Act No. 496^[12]; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; and (3) extrajudicial foreclosure of a real estate mortgage under Sec. 7 of Act No. 3135^[13] as amended by Act No. 4118.^[14] The case at bar falls under the third instance.

The issuance of a writ of possession is explicitly authorized by Act No. 3135, as amended by Act No. 4118, which regulates the manner of effecting an extrajudicial foreclosure of mortgage.

In case of default of the mortgagor in the payment of the loan obligations, the mortgagee may foreclose the mortgaged property by filing a Petition for Extrajudicial Foreclosure of Mortgage following the procedure laid down in A.M. No. 99-10-05-0.^[15] The mortgagor or his successor-in-interest may redeem the foreclosed property within one year from the registration of the sale with the Register of Deeds.^[16] During the redemption period, the buyer at public auction may file, with the RTC in the province or place where the property or portion thereof

is located, an *ex parte* motion for the issuance of a writ of possession within one year from the registration of the Sheriff's Certificate of Sale, and the court shall grant the said motion upon the petitioner's posting a bond in an amount equivalent to the use of the property for a period of twelve (12) months.^[17]

A writ of possession may be issued during the redemption period in favor of the purchaser of the mortgaged property in the foreclosure sale. Section 7 of Act No. 3135, as amended by Act No. 4118, 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] 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 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 the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by 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.

The above-quoted provision explicitly allows the purchaser in a foreclosure sale to apply for a writ of possession during the redemption period by filing a petition in the form of an *ex parte* motion under oath for that purpose. Upon the filing of such motion with the RTC having jurisdiction over the subject property and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.^[18]

Upon the expiration of the redemption period, the right of the purchaser to the possession of the foreclosed property becomes absolute. The basis of this right to possession is the purchaser's ownership of the property. Mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and the bond required is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner.^[19]

Under the foregoing judicial pronouncement, it is clear that UOB has an absolute right to take possession of the subject property since it was the highest bidder in the foreclosure sale, and the spouses Espinoza failed to redeem the said property even after the redemption period. Act No. 3135, as amended by Act No. 4118, is categorical in stating that the purchaser must first be placed in possession of the mortgaged property pending proceedings assailing the issuance of the writ of possession.^[20]