

## THIRD DIVISION

**[ G.R. No. 164919, July 04, 2008 ]**

**CHINA BANKING CORPORATION, PETITIONER, VS. SPOUSES  
TOBIAS L. LOZADA AND ERLINA P. LOZADA, RESPONDENTS.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Revised Rules of Court filed by petitioner China Banking Corporation (CBC) seeking the reversal and setting aside of the Decision<sup>[2]</sup> dated 25 March 2004 and Resolution<sup>[3]</sup> dated 10 August 2004 of the Court of Appeals in CA-G.R. SP No. 67399. The assailed Decision of the appellate court annulled and set aside: (1) the Order<sup>[4]</sup> dated 31 August 2001 of the Regional Trial Court (RTC), Branch 65, Makati City, in L.R.C. Case No. M-4184, granting the *ex parte* petition of CBC for a writ of possession over the condominium unit covered by Condominium Certificate of Title (CCT) No. 69096; (2) the Writ of Possession<sup>[5]</sup> dated 3 September 2001 issued by the RTC Branch Clerk of Court commanding the Sheriff to place CBC in possession of the said condominium unit and eject all its present occupants; and (3) the Notices to Vacate<sup>[6]</sup> dated 17 October 2001 and 22 October 2001 of the Sheriff addressed, respectively, to Primetown Property Group, Inc. (PPGI) and respondent spouses Tobias L. Lozada and Erlina P. Lozada (spouses Lozada), directing them to vacate the said property within five days from receipt of the notices.

There is hardly any dispute as to the antecedent facts of the instant Petition.

On 25 June 1995, the spouses Lozada entered into a Contract to Sell<sup>[7]</sup> with PPGI. PPGI, the developer of Makati Prime City Condominium Townhomes Project (Project), agreed to sell to the spouses Lozada Unit No. 402 of Cluster 1 of the Project, a two-bedroom residential unit with an area of 42.90 square meters, covered by CCT No. 34898, for the total price of P1,444,014.04, payable as follows:

30% Downpayment (including the Residential Fee)	P 402,803.92	- Payable in 15 months, beginning 2 October 1995
70% Balance	P 1,010,809.83	- Payable upon completion or turn- over of the unit

About six months later, or on 7 December 1995, PPGI, represented by its President Kenneth T. Yap and Treasurer Gilbert Y. Yap, and with Mortgage Clearance<sup>[8]</sup> from the Housing and Land Use Regulatory Board (HLURB), executed two Deeds of Real Estate Mortgage<sup>[9]</sup> in favor of CBC to secure the credit facilities granted by CBC to

PPGI in the combined maximum amount of P37,000,000.00. The real estate mortgages covered 51 units of the Project, including Unit No. 402.

PPGI availed itself of the said credit facilities and incurred a total principal obligation of P29,067,708.10 to CBC. When PPGI failed to pay its indebtedness despite repeated demands, CBC filed with the Clerk of Court and *Ex Officio* Sheriff of the Makati City RTC a Petition for Extrajudicial Foreclosure<sup>[10]</sup> of the real estate mortgages on 31 July 1998. The Petition was docketed as Foreclosure No. 98-098. A Notice of Sheriff's Sale<sup>[11]</sup> was issued on 7 August 1998 setting the public auction of the foreclosed properties on 11 September 1998 at 10:00 a.m. The said Notice was published in Metro Profile on 11, 18 and 25 August 1998.<sup>[12]</sup> The public auction sale took place as scheduled at which CBC was the highest bidder, offering the amount of P30,000,000.00 for the foreclosed properties. The Certificate of Sale<sup>[13]</sup> of the foreclosed properties was subsequently issued in favor of CBC on 15 October 1998.

On 25 April 2000, CBC Chief Executive Officer Peter S. Dee executed an Affidavit of Consolidation<sup>[14]</sup> stating that 21 of the 51 foreclosed properties had been either "released by take-out by certain buyers" or partially redeemed; the period for redemption of the remaining foreclosed properties (which included Unit No. 402) had already expired without having been redeemed; the titles to the remaining foreclosed properties had already been consolidated in the name of CBC; and for said reason, the Registry of Deeds of Makati City was requested to issue the corresponding CCTs in the name of CBC. Pursuant to the Affidavit of Consolidation, the Registry of Deeds of Makati City cancelled CCT No. 34898, covering Unit No. 402, and registered in the name of PPGI, and issued in its place CCT No. 69096<sup>[15]</sup> in the name of CBC on 12 May 2000.

It appears that a few months prior to the foreclosure of the real estate mortgages, PPGI, through its Senior Manager Salvador G. Prieto, Jr., sent a letter<sup>[16]</sup> dated 30 March 1998 to respondent Erlina P. Lozada (Erlina) in the following tenor:

Dear Ms. Lozada:

This refers to your purchase of **Unit 402, Cluster 1 of Makati Prime City**, a project of **Primetown Property Group, Inc. ("PPGI")**, the development of which has been partially financed by **China Banking Corporation**.

We refer to Section 18 of Presidential Decree No. 957, otherwise known as "The Subdivision and Condominium Buyer's Protective Decree". Section 18 states:

SECTION 18. *Mortgages*. No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority. Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the

loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto.

In view of the foregoing, we hereby direct your goodself to remit all payments under your Contract to Sell directly to **China Banking Corporation** at its Greenhills Branch located at Padilla Arcade, Greenhills, M.M. effective April 1, 1998. Attached is your Statement of Account for your guidance.

This payment arrangement shall in no way cause any amendment of the other terms and conditions, nor the cancellation of the Contract to Sell you have executed with **PPGI**.

Very truly yours,

(Signed)

**Salvador G. Prieto, Jr.**

Sr. Manager

Credit and Collection Department

There is nothing on record to show any immediate action taken by the spouses Lozada on the afore-quoted letter. But a year following the public auction sale of the foreclosed properties held on 11 September 1998, Erlina executed a Notice of Adverse Claim<sup>[17]</sup> dated 13 September 1999 as regards Unit No. 402, which she registered with the Registry of Deeds of Makati City.<sup>[18]</sup> Said Notice of Adverse Claim was subsequently annotated on CCT No. 69096 when it was issued in the name of CBC.

Erlina next sent a letter dated 1 December 1999<sup>[19]</sup> to both PPGI and CBC, laying down her position pertaining to Unit No. 402, to wit:

1. I have been ready, willing, and able since August 25, 1998 to pay the balance under my contract and I have tendered payment as early as then.
2. My liability is limited to the amount stated thereunder plus reasonable expenses for the transfer of title; no other liability such as for interests, penalties, charges or any other imposition is recognized. The VAT is a liability of the seller and I have never consented to accept this burden.
3. On delivery of my full payment, I have a right to demand reasonable assurance that title could be transferred to me immediately and so to require that the muniments of title and evidence of all tax payments by seller (necessary for registration) be delivered to me.

In the same letter, she advised that she was tendering payment by opening an escrow account with CBC in the amount of P1,010,809.83, representing the 70% balance of the purchase price of Unit No. 402 per the Contract to Sell with PPGI. Not long thereafter, Erlina sent another letter<sup>[20]</sup> dated 3 December 1999 to PPGI and CBC stating that she was unable to open an escrow account as no one had advised her on how to go about it. Instead, she opened a special account with the following details:

Account Name	:	Erlina P. Lozada
Account No.	:	103-630621-4
Bank	:	Chinabank Makati Head Office
Amount	:	P1,010,809.83

She reiterated that the amount represented the balance of the purchase price for Unit No. 402 under the Contract to Sell, and shall be available to the party who shall establish the lawful right to the payment and deliver the muniments of title and other documents necessary for the transfer of the same.

In reply, CBC sent Erlina a letter<sup>[21]</sup> dated 8 December 1999, telling her that the consideration for Unit No. 402 was P1,100,788.29; thus, the amount she was tendering was insufficient. CBC also informed her that all taxes including documentary stamp tax, capital gains tax, transfer tax, and all other expenses for the transfer of title to her name shall be for her exclusive account.

In another letter dated 15 May 2001 to Erlina, CBC notified her that it had already consolidated its title and ownership over Unit No. 402 which she presently occupied, and requested her to vacate and surrender the said property, including the appurtenant keys, to its duly authorized representative within 15 days from receipt of the letter.

Following the 15 May 2001 letter of CBC to Erlina, a conference was held and more letters were exchanged between the parties,<sup>[22]</sup> but, apparently, no agreement was reached.

On 27 July 2001, CBC filed an *Ex Parte* Petition for Issuance of a Writ of Possession<sup>[23]</sup> with the Makati City RTC, docketed as Land Registration Commission (L.R.C.) Case No. M-4184. CBC prayed to the court *a quo* for the following:

WHEREFORE, it is most respectfully prayed of this Honorable Court that the corresponding Writ of Possession be issued *ex parte* by the Honorable Court in favor of petitioner [CBC] and against Erlinda [sic] Lozada and/or all persons claiming rights under her name, over the condominium unit covered by CCT No. 69096 (formerly CCT No. 34898), of the Registry of Deeds for the City of Makati, with all the improvements existing thereon.

On the other hand, on 7 August 2001, the spouses Lozada instituted a Complaint<sup>[24]</sup> with the HLURB, docketed as HLURB Case No. REM-0080701-11582, with the following prayer:

WHEREFORE, [herein respondents spouses Lozada] pray of this Honorable Board to order the annulment of mortgage, foreclosure, sale,

consolidation of ownership between CBC and [PPGI] insofar as they pertain to [spouses Lozada] and to order the respondent Register of Deeds of Makati City to cancel Condominium Certificate of Title No. 69096. It is likewise prayed that a Temporary Restraining Order and/or Writ of Preliminary Injunction be issued to prevent [herein petitioner] CBC from taking possession of the unit in question.

[Spouses Lozada] pray for such other relief and remedies that are just and equitable under the premises.

L.R.C. Case No. M-4184 and HLURB Case No. REM-0080701-11582 proceeded simultaneously, although it is principally the former which concerns this Court in the present Petition.

The Makati City RTC, finding that the prayer for issuance of a writ of possession of CBC in L.R.C. Case No. M-4184 needed to be substantiated by evidence, initially set the hearing on 15 August 2001 at 10:00 a.m.<sup>[25]</sup> However, on motion of CBC, the Makati City RTC issued an Order<sup>[26]</sup> dated 15 August 2001 canceling the hearing for that day and transferring the same to 31 August 2001 at 10:00 a.m. The same Order expressly directed that Erlina be notified, but the records do not show that said notice was actually sent and received by her.

The hearing on 31 August 2001 pushed through, even without the presence of the spouses Lozada, during which the CBC presented and marked its documentary evidence.

On 31 August 2001, the Makati City RTC issued an Order<sup>[27]</sup> granting the *Ex Parte* Petition of CBC, and decreeing that:

Finding the petition to be duly substantiated by the evidence presented and pursuant to the provisions of section 7 of Act 3135 as amended by Act 4118, let a writ of possession issue in favor of the petitioner China Banking Corporation.

In accordance with the foregoing Order, the RTC Branch Clerk of Court issued the Writ of Possession<sup>[28]</sup> dated 3 September 2001 commanding the Sheriff to place CBC in possession of Unit No. 402 and eject all its present occupants. The Sheriff, in turn, issued the Notices to Vacate<sup>[29]</sup> dated 17 October 2001 and 22 October 2001 addressed to PPGI and the spouses Lozada, respectively, directing them to vacate the said property within five days from receipt of the notices.

When the Sheriff went to Unit No. 402 on 30 October 2001, he failed to enforce the Writ of Possession because the main door of the said property was padlocked,<sup>[30]</sup> prompting CBC to file with the Makati City RTC an Urgent *Ex Parte* Motion to Break Open<sup>[31]</sup> the door to Unit No. 402 and place CBC in possession thereof.

While the afore-mentioned events were unfolding in L.R.C. Case No. M-4184, the spouses Lozada were seeking recourse elsewhere.

They were able to secure an Order<sup>[32]</sup> dated 25 October 2001 in HLURB Case No. REM-0080701-11582 directing the parties therein to maintain *status quo* awaiting