

## THIRD DIVISION

**[ G.R. NO. 159882, November 23, 2007 ]**

**SPOUSES RUBEN AND VIOLETA SAGUAN, PETITIONERS, VS.  
PHILIPPINE BANK OF COMMUNICATIONS AND COURT OF  
APPEALS (SECOND DIVISION), RESPONDENTS.**

### DECISION

**NACHURA, J.:**

This is a petition for review on *certiorari*<sup>[1]</sup> of the Decision<sup>[2]</sup> dated January 24, 2003 and of the Resolution<sup>[3]</sup> dated August 21, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 71775. The Decision affirmed the Orders<sup>[4]</sup> of the Regional Trial Court (RTC) of Branch 31, Tagum City, Davao: (1) dated November 5, 2001 admitting respondent Philippine Bank of Communications' Exhibits "A" to "P"; (2) dated March 19, 2002 denying petitioners', spouses Ruben and Violeta Saguan's, Motion to Present Evidence, and granting private respondent's petition for issuance of a writ of possession; and (3) dated May 6, 2002 denying petitioners' Motion for Reconsideration of the second order.

The facts, as found by the CA, are not in dispute:

[Petitioners] spouses Ruben Saguan and Violeta Saguan obtained a loan of P3 Million from [respondent] Philippine Bank of Communications. To secure the obligation, they mortgaged five parcels of land covered by TCT Nos. 24274, 38894, 37455, 66339 and 19365, all of the Register of Deeds of the Province of Davao, and improvements therein.

Because [petitioners] defaulted in the payment of their mortgage indebtedness, [respondent] extra-judicially foreclosed the mortgage. In the auction sale on 05 January 1998, [respondent] was the only and highest bidder for P6,008,026.74. Sheriff's certificate of sale dated 12 January 1998 was executed and annotated at the back of [petitioners'] titles on 18 February 1998. As [petitioners] failed to redeem the properties within the one-year period ending on 18 February 1999, TCT Nos. T-154065, T-154066, T-154067, T-154068 and T-154069 were issued in the name of [respondent] in lieu of the old ones. Thus, [respondent] consolidated ownership of the properties in its favor. Since the parcels of land were in physical possession of [petitioners] and other persons [co-petitioners in the petition before the CA], [respondent], after due demand, filed a petition for writ of possession with Branch 31, Regional Trial Court, Tagum City. x x x.<sup>[5]</sup>

Petitioners filed an Opposition<sup>[6]</sup> to the petition for writ of possession to which respondent filed a Comment.<sup>[7]</sup> Petitioners likewise filed a Reply<sup>[8]</sup> to the Comment.

In their Opposition and Reply, petitioners argued that a writ of possession should not issue considering respondent's failure to return the excess or surplus proceeds<sup>[9]</sup> of the extrajudicial foreclosure sale based on our ruling in *Sulit v. Court of Appeals*.<sup>[10]</sup> In refutation, respondent points to petitioners' remaining unsecured obligations with the former to which the excess or surplus proceeds were applied.

After the hearing on respondent's evidence, the RTC issued two (2) separate orders requiring respondent to file a Formal Offer of Evidence. Respondent failed to comply with the aforesaid orders within the time frame prescribed, thus prompting petitioners to file a motion to dismiss grounded on Section 3,<sup>[11]</sup> Rule 17 of the Rules of Court.

Thereafter, respondent belatedly filed its Formal Offer of Evidence. Consequently, the RTC issued the first assailed Order<sup>[12]</sup> admitting respondent's offer of exhibits thereby rendering petitioners' motion to dismiss moot and academic. The RTC then issued the Order<sup>[13]</sup> denying petitioners' Motion to Present Evidence and granted the petition for writ of possession. The last Order<sup>[14]</sup> of the RTC denied petitioners' Motion for Reconsideration.

Upon petition for *certiorari* and mandamus, the CA rejected petitioners' allegations of grave abuse of discretion in the lower court's issuance of the foregoing Orders. The CA affirmed respondent's entitlement to a writ of possession as a matter of right, the latter having consolidated its ownership over the parcels of land upon expiration of the redemption period. It emphasized that the issue on the failure to return the excess or surplus proceeds of the auction sale had been squarely met by the respondent, and therefore, the case was distinguishable from *Sulit v. Court of Appeals*. In all, the CA upheld the general rule that the issuance of a writ of possession to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function of the court.

Hence, this recourse.

In this appeal, the issues for our resolution are:

1. Whether the RTC should have issued a writ of possession considering respondent's failure to remit the excess or surplus proceeds of the extrajudicial foreclosure sale.
2. Corollary thereto, whether respondent may unilaterally apply the excess or surplus proceeds of the extrajudicial foreclosure sale to petitioner's remaining unsecured obligations.
3. Whether the RTC should have granted petitioners' motion to dismiss the petition for writ of possession based on respondent's failure to comply with the RTC's Orders on the filing of a formal offer of evidence.

A writ of possession is an order enforcing a judgment to allow a person's recovery of possession of real or personal property. An instance when a writ of possession may issue is under Act No. 3135,<sup>[15]</sup> as amended by Act No. 4118, on extrajudicial foreclosure of real estate mortgage.<sup>[16]</sup> Sections 6 and 7 provide, to wit:

Section 6. *Redemption.* – In all cases in which an extrajudicial sale is made under the special power herein before 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 anytime within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

Section 7. *Possession during redemption period.* – In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance 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 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 Number Four hundred and ninety-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.

From the foregoing provisions, a writ of possession may be issued either (1) within the one-year redemption period, upon the filing of a bond, or (2) after the lapse of the redemption period, without need of a bond.<sup>[17]</sup>

Within the redemption period the purchaser in a foreclosure sale may apply for a writ of possession by filing for that purpose an *ex-parte* motion under oath, in the corresponding registration or cadastral proceeding in the case of property covered by a Torrens title. Upon the filing of an *ex-parte* motion and the approval of the corresponding bond, the court is expressly directed to issue the order for a writ of possession.<sup>[18]</sup>

On the other hand, after the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale as the mortgagor is now considered to have lost interest over the foreclosed property.<sup>[19]</sup> Consequently, the purchaser, who has a right to possession after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.<sup>[20]</sup> In this regard, the bond is no longer needed. The purchaser can demand possession at any time following the consolidation of ownership in his name and the issuance to him of a new TCT. After consolidation of title in the purchaser's name for

failure of the mortgagor to redeem the property, the purchaser's right to possession ripens into the absolute right of a confirmed owner. At that point, the issuance of a writ of possession, upon proper application and proof of title, to a purchaser in an extrajudicial foreclosure sale becomes merely a ministerial function.<sup>[21]</sup> Effectively, the court cannot exercise its discretion.

Therefore, the issuance by the RTC of a writ of possession in favor of the respondent in this case is proper. We have consistently held that the duty of the trial court to grant a writ of possession in such instances is ministerial, and the court may not exercise discretion or judgment.<sup>[22]</sup> The propriety of the issuance of the writ was heightened in this case where the respondent's right to possession of the properties extended after the expiration of the redemption period, and became absolute upon the petitioners' failure to redeem the mortgaged properties.

Notwithstanding the foregoing, the petitioners insist that respondent's failure to return the excess or surplus proceeds of the extrajudicial foreclosure sale converted the issuance of a writ of possession from a ministerial to a discretionary function of the trial court pursuant to our holding in *Sulit v. Court of Appeals*.<sup>[23]</sup>

We are not persuaded.

A careful reading of *Sulit* will readily show that it was decided under a different factual milieu. In *Sulit*, the plea for a writ of possession was made during the redemption period and title to the property had not, as yet, been consolidated in favor of the purchaser in the foreclosure sale. In stark contrast, the herein petitioners failed to exercise their right of redemption within the one-year reglementary period provided under Section 6 of Act No. 3135, as amended, and ownership over the properties was consolidated in, and corresponding titles issued in favor of, the respondent.

We emphasize that the proceeding in a petition for a writ of possession is *ex-parte* and summary in nature. It is a judicial proceeding brought for the benefit of one party only and without need of notice to any person claiming an adverse interest. It is a proceeding wherein relief is granted even without giving the person against whom the relief is sought an opportunity to be heard.<sup>[24]</sup> By its very nature, an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized under Act No. 3135, as amended.

Be that as it may, the debtor or mortgagor is not without recourse. Section 8 of Act No. 3135, as amended, provides:

Section 8. *Setting aside of sale and writ of possession.* – The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the