

FIRST DIVISION

[G.R. No. 154355, May 20, 2004]

**SPOUSES REMPSON SAMSON AND MILAGROS SAMSON; AND
REMPSON REALTY & DEVELOPMENT CORPORATION,
PETITIONERS, VS. JUDGE MAURICIO M. RIVERA, IN HIS
CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL
COURT OF ANTIPOLO CITY, BRANCH 73; ATTY. JOSELITA
MALIBAGO-SANTOS, IN HER CAPACITY AS EX OFFICIO SHERIFF,
RTC OF ANTIPOLO CITY; AND LENJUL REALTY CORPORATION,
RESPONDENTS.**

D E C I S I O N

PANGANIBAN, J.:

In denying the Petition, this Court applies the well-entrenched rule that the buyer in an extrajudicial foreclosure sale is entitled to possession of the purchased property. Any question regarding the regularity and validity of the mortgage and foreclosure sale may be determined only after the issuance of the writ of possession.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, seeking to set aside the March 7, 2002 Resolution^[2] and the July 18, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 69266. The March 7, 2002 Resolution disposed as follows:

"WHEREFORE, the instant petition is DISMISSED."^[4]

The July 18, 2002 Resolution denied reconsideration.

The Facts

The pertinent facts are undisputed. Petitioner Spouses Rempson and Milagros Samson incurred from Far East Bank and Trust Company (FEBTC) loan obligations, the principal of which amounted to fifty-five million pesos (P55,000,000).^[5] On October 10, 1994 and February 22, 1996, in order to secure the payment of the loan obligations, Spouses Samson executed in favor of FEBTC two real estate mortgages covering five parcels of commercial property located at Antipolo City, Rizal.^[6]

Petitioner spouses failed to settle their loan obligations. Thus, on May 16, 2000, FEBTC filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage^[7] before the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court (RTC) of Antipolo City.^[8] In their application, FEBTC requested the said office

to foreclose the two mortgages extrajudicially, in the manner and form prescribed by Act 3135, as amended, to satisfy the debt of P72,219,158.45, inclusive of interest, penalties and other charges.^[9]

Acting on the application, the Office of the Clerk of Court and Ex-Officio Sheriff issued a Notice of Sheriff Sale dated May 19, 2000,^[10] setting the foreclosure sale on June 22, 2000.^[11] There was only one bidder during the foreclosure sale, so in accordance with AM 99-10-05-0,^[12] the sheriff postponed the auction to July 5, 2000.^[13]

On July 5, 2000, the auction sale proceeded with two bidders participating -- FEBTC and Lenjul Realty and Development Corporation, with the latter declared as the highest bidder in the amount of eighty million pesos (P80,000,000).^[14] On July 11, 2000, a Certificate of Sheriff's Sale was issued confirming the sale of the foreclosed properties to the winning bidder.^[15] Shortly thereafter, the Certificate of Sale was registered with the Registry of Deeds of Antipolo City.^[16] On February 19, 2001, new Certificates of Title over the foreclosed properties were issued by the Register of Deeds of Antipolo City in favor of Lenjul Realty Corporation.^[17]

On April 3, 2001, Private Respondent Lenjul Realty filed a Petition for the Issuance of a Writ of Possession, which sought an ex parte issuance of a writ of possession over the foreclosed properties.^[18] The Petition was docketed as Land Registration Case No. 01-2698 and raffled to Branch 73 presided by Judge Mauricio M. Rivera.^[19] On June 11, 2001 and June 15, 2001, Spouses Samson and Rempson Corporation filed their respective Answer/Opposition.^[20]

While the Petition was pending, Spouses Samson and Rempson Corporation filed with the Antipolo City RTC, an action for Annulment of Extra-Judicial Foreclosure and/or Nullification of Sale and the Certificates of Title, plus Reconveyance and Damages with Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction. Petitioners filed it against Lenjul Realty Corporation, FEBTC, Bank of the Philippine Islands, Joselita Malibao-Santos in her capacity as the clerk of court and ex officio sheriff of the Antipolo City RTC, and the Register of Deeds of Antipolo City. The case was docketed as Civil Case No. 01-6219 and raffled to Branch 71 presided by Judge Felix S. Caballes.^[21] On August 15, 2001, upon motion of Petitioner Rempson Realty and Development Corporation, Judge Caballes issued an Order directing the consolidation of the civil case with the land registration case.^[22]

On September 18, 2001, Judge Rivera issued an order denying the consolidation of the Petition for Writ of Possession and the civil case for annulment of foreclosure.^[23] On October 22, 2001 and December 4, 2001, respectively, Rempson Corporation and Spouses Samson moved for a reconsideration of the September 18, 2001 Order denying consolidation.^[24]

On November 5, 2001, Judge Rivera gave due course to the Petition for the Issuance of a Writ of Possession and denied the Opposition of Spouses Samson and Rempson Corporation.^[25] Thus, they filed their respective Motions for Reconsideration on December 4, 2001 and December 7, 2001.^[26]

On February 11, 2002, Judge Rivera denied reconsideration of the Order giving due course to the Petition for the Issuance of the Writ of Possession and directed the issuance of such writ of possession.^[27]

On February 20, 2002, Judge Rivera issued an Order granting petitioners' Motion for Reconsideration with regard to the September 18, 2001 Order denying the consolidation of cases.^[28]

On February 26, 2002, a Writ of Possession^[29] was issued directing the sheriff of the Antipolo City RTC to place Lenjul Realty Corporation in physical possession of the foreclosed properties. On the same date, the sheriff issued a Notice to Vacate^[30] addressed to Rempson Corporation, ordering it to leave the properties on or before March 2, 2002.

On February 22, 2002, petitioners filed with the Court of Appeals the aforesaid Special Civil Action for Certiorari with Prohibition/Mandamus under Rule 65 with an Application for Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order to annul the November 5, 2001 and the February 11, 2002 Orders of Judge Rivera.^[31]

Ruling of the Court of Appeals

The Court of Appeals ruled that certiorari was improper, because there was an adequate remedy in the ordinary course of law. Citing Section 8 of Act No. 3135, it opined that petitioners' remedy was to file a petition to set aside the foreclosure sale and to cancel the writ of possession in LR Case No. 01-2698. The CA further noted that certiorari was premature inasmuch as petitioners had failed to file a motion for reconsideration of the Order directing the issuance of the writ of possession.^[32]

In denying the Motion for Reconsideration, the Court of Appeals held that the issuance of a writ of possession was a ministerial function that was done upon the filing of the proper motion and the approval of the corresponding bond.^[33] It further ruled that prohibition did not lie to enjoin the implementation of the writ.^[34]

Hence this Petition.^[35]

The Issues

In their Memorandum, petitioners assign the following issues for our consideration:

"1.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera ordering the immediate issuance of a writ of possession in favor of private respondent Lenjul Realty Corporation without first requiring presentation of evidence and formal offer thereof;

"2.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera upholding the validity of the issuance of new titles over the foreclosed properties in the name of Private Respondent Lenjul Realty Corporation despite the fact that the consolidation of

ownership therein was done prior to the expiration of the 1-year period of redemption.

"3.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera upholding the now 3-month period of redemption for juridical mortgagors under the General Banking Act of Year 2000 and the application of said law retroactively as to violate the equal protection clause of the [n]ew Constitution and the prohibition therein on non-impairment of contracts.

"4.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera refusing consolidation of the annulment case pending in the sala of Judge Caballes with the case below despite the fact that petitioners had already contested Private Respondent Lenjul Realty Corporation's presumed ownership over the foreclosed properties so that the issue of such presumed ownership should first be resolved before the petition for writ of possession is heard.

"5.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera giving due course to the petition for writ of possession despite the fact that Private Respondent Lenjul Realty Corporation was not the winning bidder at the foreclosure sale, nor a transferee and/or successor-in-interest of the rightful winning bidder Lenjul Realty and Development Corporation.

"6.) Whether or not the Court of Appeals had erroneously affirmed the ruling of x x x Judge Rivera ignoring and disregarding existing rules of procedure and jurisprudence that foreclosed properties, consisting of separate lots covered by individual transfer certificates of title, should be sold separately and not en masse.

"7.) Whether or not the Court of Appeals had erred in dismissing the special civil action for certiorari on grounds of perceived technicalities and/or alleged procedural imperfections rather than on its merits."^[36]

The issues to be addressed in this case are as follows: (1) whether the trial court committed grave abuse of discretion in granting the Petition for the Issuance of a Writ of Possession; and (2) whether the filing of a Petition for Certiorari with the Court of Appeals was the proper remedy.

The Court's Ruling

The Petition has no merit.

First Issue: **Writ of Possession**

The Court of Appeals correctly sustained the issuance of the Writ of Possession. The issuance of the Writ is explicitly authorized by Act 3135^[37] (as amended by Act 4118), which regulates the methods of effecting an extrajudicial foreclosure of mortgage.^[38] Section 7 thereof 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.”

Entitlement to Writ of Possession

Under the provision cited above, the purchaser in a foreclosure sale may apply for a writ of possession during the redemption period by filing for that purpose an ex parte motion under oath, in the corresponding registration or cadastral proceeding in the case of a property with torrens title. Upon the filing of such motion and the approval of the corresponding bond, the court is expressly directed to issue the writ. [39]

This Court has consistently held that the duty of the trial court to grant a writ of possession is ministerial.[40] Such writ issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the trial court.[41] Any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act 3135. [42] Such question cannot be raised to oppose the issuance of the writ, since the proceeding is ex parte.[43] The recourse is available even before the expiration of the redemption period provided by law and the Rules of Court.[44]

The purchaser, who has a right to possession that extends after the expiration of the redemption period,[45] becomes the absolute owner of the property when no redemption is made. Hence, at any time following the consolidation of ownership and the issuance of a new transfer certificate of title in the name of the purchaser, he or she is even more entitled to possession of the property. [46] In such a case, the bond required under Section 7 of Act 3135 is no longer necessary, since possession becomes an absolute right of the purchaser as the confirmed owner. [47]