

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 03714-MIN, January 29, 2015]

**HILVELYN LOBATON AND EMILIA A. LOBATON, PETITIONERS,
VS. HON. PRESIDING JUDGE OF THE REGIONAL TRIAL COURT,
BRANCH 16, DAVAO CITY, MR. ABE ANDRES, SHERIFF IV,
REGIONAL TRIAL COURT, BRANCH 16, DAVAO CITY, TRADE
INVESTMENT DEVELOPMENT CORPORATION OF THE
PHILIPPINES AND MACESTE W. UY, RESPONDENTS.**

D E C I S I O N

PEREZ, J.:

Spouses Hilvelyn Lobaton and Emilia A. Lobaton (petitioners) filed this *Petition for Certiorari*^[1] under Rule 65 of the Rules of Court seeking nullification of the Order^[2] rendered by the Regional Trial Court, Branch 16, Davao City, dated 26 May 2010 in Other Case No. 900-09 denying petitioners' *Motion to Set Aside Order* dated 29 January 2010 granting the *Writ of Possession and the Motion to Set Aside Writ of Possession*; and the Order^[3] dated 23 June 2010 denying the *Motion for Reconsideration* of the 26 May 2010 Order.

The Facts.

Hi-Provite Industry, Inc. (Hi-Provite), a duly organized domestic stock corporation,^[4] entered into a contract for a short-term revolving credit line worth Four Million Pesos (P4,000,000.00) with the Trade and Investment Development Corporation of the Philippines (TIDCORP), a government-owned financial institution created by virtue of P.D. No. 1080.

As security for the said credit line, Napoleon Ceasar G. Reyes, Jr., in accommodation of Hi-Provite, executed a Real Estate Mortgage^[5] dated 18 July 2004 in favor of TIDCORP on the lot, buildings and improvements located at 104 Pluto Street, GSIS Village, Davao City with Transfer Certificate of Title No. 32487^[6] and registered under Reyes' name.

On 30 August 2004, Hi-Provite drew three million four hundred thousand pesos (P3,400,000.00) from the credit line, for which it he issued a Promissory Note^[7] with a maturity date of 15 November 2004.

However, upon maturity of the promissory note, Hi-Provite failed to pay its loan obligations with TIDCORP.^[8] As a result, TIDCORP, filed an application for Extra-Judicial Foreclosure of Real Estate Mortgage before the Regional Trial Court of Davao City docketed as EJF-REM Case No. 8220-07.^[9]

On 30 August 2007, the Reyes property was sold at a public auction. TIDCORP

emerged as the highest bidder during the auction sale and a Certificate of Sheriff's Sale^[10] was subsequently issued to it. Consequently, after the expiration of the one year redemption period given by law, without the Spouses Reyes redeeming the property, the title of the said property was consolidated in TIDCORPS name under TCT No. T-440939.^[11]

On November 2009, TIDCORP auctioned-off the subject property. In the said auction, Maceste Uy was declared the winning bidder.^[12]

When they discovered claimants in possession of the subject property, TIDCORP and Maceste Uy filed an Ex-Parte Petition^[13] for the issuance of a writ of possession over a parcel of land covered by TCT No. T-440939 before RTC, Branch 16, Davao City (court *a quo*), in order to acquire possession over the property

In its 29 January 2010 Order,^[14] the court *a quo* issued a Writ of Possession in favor of TIDCORP and Uy, which reads:

"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.

Regardless of whether or not there is an pending suit for annulment of the mortgage or of the foreclosure itself, the purchaser is entitled to a writ of possession, without prejudice to the ensuing outcome of the other proceeding. (LAM v. METROPOLITAN BANK AND TRUST COMPANY- 546 SCRA 200-201)

Accordingly, the Motion to Set Aside Order dated January 29, 2010, granting the Writ of Possession and Motion to Set Aside Writ of Possession filed by movants Spouses Hivelyn Lobatonand Emilia A, Lobaton are DENIED.

SO ORDERED."

Pursuant to the above-mentioned order, Abe C. Andres, Sheriff of the court *a quo*, issued a Notice to Vacate,^[15] dated 11 February 2010, which reads:

"Notice to Vacate

TO: Sps. Napoleon Ceasar G. Reyes, Jr. and all persons claiming rights under them.
104 Pluto St., GSIS Heights
Matina, Davao City.

Greetings:

You are hereby notified that by virtue of the Writ of Possession dated February 4, 2010, issued in the above-entitled case by the Honorable Court, Regional Trial Court, Branch 16, Davao City, copy of which is herewith served upon you to serve as notice that pursuant to the said

writ of possession you are hereby given by the undersigned a period of fifteen (15) days from the date of service hereof, to voluntarily vacate the property covered by TCT No. T-440939 which is subject of the said writ of possession, and peacefully turn over possession thereof to the petitioner.

Failure on your part to comply the same, the undersigned will be constrained to implement the writ in accordance with its mandate.

Davao City, Philippines, February 11, 2010."

Upon learning that a writ of possession was issued over the subject property, petitioners, who claim to be the rightful owners of the property instead of the Spouses Reyes, filed a Motion to Set Aside Order, dated 29 January 2010, Granting the Writ of Possession and Motion to Set Aside Writ of Possession.^[16] They opposed the issuance of the writ citing mainly their right over the subject property.

At the same time, they filed a case for "*Declaration of Nullity of Deed of Absolute Sale, Declaration of Nullity of Transfer Certificate of Title No. T-324387 Registered in the name of Napoleon Ceasar G. Reyes, Jr. married to Esther L. Reyes, Declaration of Nullity of Real Estate Mortgage, Declaration of Nullity of Alleged Extra-Judicial Foreclosure, Etc.*"^[17] against spouses Napoleon Ceasar G. Reyes, Jr., and Esther L. Reyes which is pending before the RTC, Branch 14, Davao City.

Private respondent Uy then filed his Comment and/or Opposition to petitioners' above-mentioned motion.^[18]

In rejoinder, petitioners filed a Manifestation by way of Reply.^[19]

The court a *quo*, through the assailed 26 May 2010 Order, denied petitioners motion to set aside its previous order, which granted the writ of possession.

Unsatisfied with the denial of their motion, petitioners moved to reconsider the court a *quo*'s 26 May 2010;^[20] a move which was formally opposed by Uy in his Opposition filed in court.^[21]

Finding no convincing reason to abandon their previous order, the court a *quo*, through its 23 June 2010 Order, denied petitioners' Motion for Reconsideration.

Undeterred, petitioners filed this petition for certiorari, imputing the following:

1. THAT THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ERROR AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE MOTION TO SET ASIDE ORDER, DATED JANUARY 29, 2010, GRANTING THE WRIT OF POSSESSION AND MOTION TO SET ASIDE WRIT OF POSSESSION FILED BY HEREIN PETITIONERS.

2. THAT THE HONORABLE PUBLIC RESPONDENT COMMITTED GRAVE ERROR AND GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION, IN DENYING THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS.